



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुक्रवार 19 अक्टूबर, 2012/27 आश्विन, 1934

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, 18th October, 2012

No. Shram (A) 7-1/2005 (Award).—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Shimla of the following cases on the website of Labour & Employment Department:—

Sr. No:	Case No:	Title of the Case	Date of Award
1.	54/2009	S/Shri Ramesh Chand Vs HPPWD, Chopal.	01-09-2012
2.	74/2007	Smt Bimla Negi Vs G.M. Gujrat Ambuja Cement Ltd.	01-09-2012
3	38/2011	Sh. Rajesh Kumar Vs M/s GMP Technical Solutions, Distt. Solan.	04-09-2012
4	34/2011	Sh. Lal Chand Vs Director youth services and sports, Shimla.	05-09-2012
5	68/2009	Sh. Daulat Ram Vs DFO. Rampur.	06-09-2012
6	57/2007	Workers Union Vs M/S Associated Ancillaries, Parwanoo.	06-09-2012
7	39/2009	Sh. Dharam Chahdn Vs M/S Hotel Oberoi Clarks Shimla.	07-09-2012
8	61/2008	Sh. Roshan Lal Vs HPSEB Rampur.	06-09-2012
9	130/2010	Sh. Madan Thakur Vs M/s Vaishnavi cosmetic industries Solan.	12-09-2012
10	26/2007	Sh. Ashwani Kumar Vs M/s Gujrat Ambuja cement Ltd & others.	14-09-2012
11	266/2012	Sh. Gulzar Singh Vs The G.M. Eicher Demm, Parwanoo.	20-09-2012
12	30/2007	Smt. Lalita Jindal Vs The Divisional Forest Officer, Solan, H.P.	31-08-2012

By order,
Sd/-
ACS (Labour & Employment).

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 26 of 2007.
Instituted on. 19.3.2007.
Decided on 14.9.2012.

Ashwani Kumar S/o Shri Dila Ram R/o Village Pather, P.O Piplughat, Tehsil Arki, District Solan, H.P.

...Petitioner.

Vs.

1. M/s Ambuja Cement, Darlaghat, Tehsil Arki District Solan, H.P, through its General Manager.
 2. Sardar Machine Tools, D-45, Industrial Area, Phase-V, S.A.S Nagar, 160005.
- ...Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Aman Sood, Advocate.
For respondent No.1 : Shri Peeyush Verma, Advocate.
For Respondent No.2 : Shri Manish Sirkek, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Ashwani Kumar S/o Shri Dila Ram workman by (1) Management of M/s Gujrat Ambuja Cement, Ltd., Darlaghat, District Solan, H.P (2) The Contractor, M/s Sardar Machine tools, D-45, Industrial Area, Phase-V, SAS Nagar-160051 w.e.f. 14.11.2002 on the basis of domestic enquiry is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed the claim stating that he joined respondent No.1 in the year of 1994 as Turner and continued till November, 2002. In July, 2002 chargesheet was served upon the petitioner on the allegations that he had damaged Leth Machine and on 11.7.2002 while on duty, the petitioner had committed theft of certain articles and he also remained absent from duties thereby he was negligent. The petitioner was asked to submit his explanation within 48 hours. Petitioner alleged that the charges were concocted, manipulated and manufactured, however, petitioner submitted his reply on 15.7.2002. On 14.11.2007, the petitioner was alleged to have been served a letter dated 14.11.2002 stating that charges against him were proved and as such his services were terminated. In fact, petitioner did not receive any letter dated 14.11.2002 through registered post and never refused to receive the same. No attempt was made by the respondents to deliver the aforesaid letter to the petitioner. The petitioner stated that he was not given any opportunity to cross-examine the witnesses of respondents and he was not associated during enquiry. He was condemned un-heard as before his termination no show cause notice was served upon him. The enquiry report was also not supplied to him, therefore, the entire enquiry report was illegal being against the principles of natural justice. Consequently, petitioner prayed to set aside his termination order and prayed that he be reinstated in service with all consequential benefits including back wages.

3. Respondent no.1 filed reply wherein preliminary objections as to locus standi, maintainability, suppression of material facts by the petitioner, estoppel, non-joinder of necessary parties and jurisdiction of this Court were raised. On merits, respondent no.1 denied that the petitioner joined as Turned and continued till November, 2002. In fact, the petitioner never remained the employee of respondent No.1, so, there was no occasion for the respondent No.1 to serve any chargesheet and hold any enquiry against the petitioner. Consequently, respondent No.1 stated that the services of petitioner were never terminated. However, respondent no.1 stated that as per information, the petitioner was working under respondent No.2 and he had committed misconduct of theft, so, he was chargesheeted and after the enquiry he was terminated by respondent No.2. As the result, respondent no.1 prayed for the dismissal of the petition.

4. Respondent No. 2 filed separate reply wherein preliminary objection as to maintainability was taken as it was stated that the petitioner was not the employee of respondent No. 2 and it was respondent no.1 which used to pay salary/wages to the petitioner. On merits, respondent No. 2 stated that the petitioner was appointed as a Turner by respondent No.1 The petitioner was working in the workshop of respondent no.1. He damaged Leth machine in the workshop and thereafter, he remained absent from duties. The petitioner also committed theft of certain articles. Consequently, he was chargesheeted and enquiry was held wherein the petitioner participated and charges against him were proved. Thereafter, his services were terminated. The petitioner attended each and every hearing of the enquiry, so, his termination was legal and according to law. As the result, respondent No.2 also prayed for the dismissal of the petition.

5. Petitioner filed rejoinder to both the replies filed by respondents wherein he denied all the preliminary objections taken by the respondents in replies and further reasserted the averments already made in the claim petition.

6. On the pleadings of the parties, the following issues are framed.

1. Whether the services of the petitioner have been legally terminated on the basis of the domestic enquiry dated 14.11.2007? If so, its effect?
..OPP.
2. If issue no.1 is not proved in affirmative, to what relief the petitioner is entitled to?
..OPP.
3. Whether the petitioner was not a workman of respondents? If so, its effect?
..OPR.
4. Whether the petition in the present form is not maintainable?
..OPR.
5. Relief.

7. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

8. I have heard both the parties and gone through the record carefully.

9. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	:	No.
Issue No.2	:	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3	:	Partly no.
Issue No.4	:	No.
Relief.	:	Reference answered in negative as the termination of the petitioner is improper and unjustified per operative part of award.

Reasons for finding

Issue No.1 & 3.

10. Both these issues are interconnected and can be disposed of by a single finding.

11. After hearing both the parties and going through the record carefully, I am of the considered opinion that the services of petitioner were illegally terminated on 14.11.2002. As the result, he is entitled to be reinstated in service with seniority and continuity.

12. In the light of reply filed by respondent No.1, it is clear that respondent no.1 has disputed that the petitioner was engaged in service by it as a Turner. It was stated that he was the workman of respondent No. 2. At the same time, reply filed by respondent No. 2 is revealing that the petitioner was engaged in service by the respondent No.1.

13. However, the testimony of RW-1 Sunil Sharma, who appeared on behalf of respondent no.1 is relevant. This witness has stated that respondent No.2 was contractor for mechanical maintenance of respondent No.1 and the factory premises belong to respondent No.1

and on behalf of respondent No. 2 Gurmukh Singh appeared in the witness box as RW-2 who has stated that for the alleged misconduct of damage to the Leth machine, theft of some articles and unauthorised absence, the petitioner was chargesheeted by the respondent No.2 and enquiry was also conducted by respondent No.2 against the petitioner and the petitioner was terminated by respondent No. 2. In his cross-examination conducted by respondent no.1, this witness has admitted that the petitioner was employee of respondent No. 2 and he was having no concern with respondent No.1. Therefore, said evidence are sufficient to establish that in fact the petitioner was the workman of respondent No.2. Moreover, the petitioner has challenged the chargesheet Ex. RP-A/7 which was served upon him by respondent No.2 and further the petitioner has challenged his termination letter Ex. RW-2/D dated 14.11.2002 which was also issued by respondent No.2. Therefore, the petitioner himself has admitted that he was the employee/workman of respondent No. 2.

14. Hence, for the aforesaid reasons, it is hereby held that before his termination, the petitioner was workman of respondent No.2 and he was chargesheeted by respondent no.2 and terminated by respondent No. 2.

15. Now, comes the question whether the termination orders of petitioner issued by respondent No. 2 are sustainable under law. After due consideration, to my mind said orders are illegal having been passed on the basis of enquiry report Ex. PX-2 dated 13.9.2002 and for the reasons to be recorded hereinafter, I am of the opinion that entire enquiry report as well as termination orders of petitioner are against the principles of natural justice. I find sufficient evidence that no opportunity of being heard was afforded to the petitioner and it appears that he has been condemned unheard.

16. The chargesheet Ex. RP-a/7 dated 12.7.2002 was served upon the petitioner for the damage caused by petitioner to the Leth machine to the tune of Rs. 10,000/- and for committing theft of certain material on 11.7.2002 while he was on duty and for remaining absent from duties without any intimation w.e.f. 11.7.2002. There is nothing on record that prior to said chargesheet any show cause notice was served upon the petitioner to explain his position regarding the aforesaid allegations. There is nothing in testimony of RW-2 Gurmukh Singh who appeared on behalf of respondent No.2 that prior to chargesheet, any show cause notice was served upon the petitioner to explain his position, so, there is violation of principles of natural justice.

17. The testimony of petitioner Ashwani Kumar is revealing that he was not associated during the enquiry. He has categorically denied all the allegations leveled against him in the chargesheet. He denied that enquiry proceedings Ex. PX-6 to Ex. PX-9 bear his signatures. His testimony is revealing that the entire enquiry proceedings were carried out behind his back. From the careful perusal of record, I find substance in the testimony of petitioner.

18. The enquiry proceedings Ex. PX-2 are revealing that on 24.7.2007, the petitioner Ashwani Kumar admitted the charges No. 1 & 3 as to the damage caused by him to the Leth machine and his willful absence from duties w.e.f. 11.7.2002. Ex. PX-6, is revealing that there is no categorical admission on the part of petitioner qua the aforesaid charges No. 1 & 3. Ex. PX-6, the alleged enquiry proceedings, is revealing that the petitioner Ashwani Kumar had admitted both the charges No. 1 & 3. The petitioner has categorically denied his signatures over Ex. PX-6. There is no specific statement of petitioner as to the aforesaid admission to charges no. 1 & 3.

19. Ex. PX-9 is the copy of proceedings of enquiry dated 6.9.2002. From the bare perusal of Ex. PX-6 and Ex. PX-9, it is clear that both the enquiry proceedings are in the hands of different persons. The author of both these proceedings is not the same person. That means both the proceedings have not been drawn by the same enquiry officer. It has also caused doubt over the fairness and genuineness of the enquiry officer.

20. Ex. PX-2, the proceedings in brief/finding of the enquiry is revealing that on 6.9.2002, one Shri Hem Raj Dogra submitted a complaint against the petitioner alleging that he was manhandled, threatened and harassed by the brother of the petitioner who was hired as bus driver of Maggu Transport. I fail to understand why the enquiry officer entertained said complaint on behalf of Hem Raj because there was no charge against the petitioner that his brother, who was driver of Maggu Transport has manhandled, threatened and harassed the Hem Raj Dogra. The enquiry proceedings dated 6.9.2002 Ex. PX-9 are relating to the aforesaid allegation that the brother of petitioner had beaten one Hem Raj Dogra. Since, there was no charge against the petitioner regarding said allegation, therefore, the aforesaid evidence produced on record by respondent no.2 are liable to be ignored being beyond the scope of chargesheet.

21. Also, Ex. PX-2 proceedings of enquiry is revealing that on 29.7.2002, the enquiry officer recorded the statement of Hem Raj Dogra and also one Jaswant Singh. But the detailed proceedings dated 29.7.2002 Ex. PX-8 are revealing that no statement of any witness was recorded, therefore, the enquiry was adjourned for next date on 5.8.2002. The enquiry proceedings Ex. PX-2 is revealing that after 29.7.2002 the next date of enquiry was on 6.9.2002, but, in view of Ex. PX-8, the enquiry proceedings were adjourned for 5.8.2002 from 29.7.2002. There is nothing on record to show what happened on 5.8.2002 and how the enquiry proceedings were held on 6.9.2002 and how on 6.9.2002 the presence of petitioner was procured.

22. All the aforesaid evidence established that entire enquiry proceedings have become doubtful and due opportunity of being heard was not afforded to the petitioner. Consequently, there is violation of principles of natural justice while conducting the alleged enquiry against the petitioner.

23. On the top of it, Ex. PX-10, termination letter issued by respondent no.2 to the petitioner is revealing that during enquiry the charges against the petitioner were proved and in view of gravity and seriousness of the charges, the petitioner was terminated from the employment. There is nothing on record that enquiry report was supplied to the petitioner and he was given opportunity to explain on the punishment to be inflicted. No opportunity of being heard was afforded to the petitioner before imposing a major penalty of termination. RW-2 Gurmukh Singh has admitted in his cross-examination that enquiry report was not supplied to the petitioner and before termination no show cause notice was given to him. Therefore, again there is a violation of principles of natural justice before terminating the services of petitioner.

24. Hence, in the light of my aforesaid discussion, it is hereby held that the services of the petitioner were illegally terminated by the respondent No.2 on the basis of domestic enquiry vide termination order dated 14.11.2002 as the petitioner has established that he was engaged by respondent No.2 and not by respondent No.1, therefore, there was relationship of employer and employee between petitioner and respondent No.2. Accordingly, issue No.1 is answered in affirmative whereas issue No.3 is partly answered in negative.

Issue No. 2

25. For the reasons to be recorded hereinabove while discussing issues No.1 & 3, the termination orders of the petitioner dated 14.11.2002 issue by respondent No.2 are hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions along-with seniority and continuity. However, keeping in view the facts and circumstances of the case, the petitioner is not entitled for back wages. Accordingly, this issue is decided in favour of petitioner.

Issue No. 4

26. From the careful perusal of record, there is nothing to suggest that the petition is not maintainable in the present form. Hence, this issue is answered against the respondent.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered in negative as the termination of the services of the petitioner is improper and unjustified. Consequently, the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions with seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 14th day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 74 of 2007.
Instituted on. 24.8.2007.
Decided on 1.9.2012.

Bimla Negi W/o Shri Bhagi Rath R/o Bindra Niwas, Panthaghati, Kasumpati, Shimla-9.
...Petitioner.
Vs.

1. The General Manager, Gujrat Ambuja Cement, Ltd., P.O Darlaghat, Tehsil Arki, District Solan, H.P.
2. The Branch Manager, Gujrat Ambuja Cement Ltd., Khalini Shimla-2.
...Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. R. Sharma, Advocate.
For respondent : Shri Peeyush Verma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of smt. Bimla Negi W/o Shri Bhagi Rath workman by the (1) the General Manager, Gujrat Ambuja Cement, Ltd., P.O Darlaghat, Tehsil Arki, District Solan, H.P. (2) Branch Manager, Gujrat Ambuja Cement Ltd., Khalini

Shimla-2. w.e.f. 1.2.2007 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that she was working in the respondent company since 1994 at different places. She was paid Rs. 3,000/- per month. The petitioner was posed in the hostel at Navbahar as a cook and she worked there till 1995 when the hostel was shifted to New Shimla for five years and thereafter, hostel was again shifted to Sanjauli, where she worked for three years. Thereafter, the hostel was again shifted to Navbahar where the petitioner worked for six months and thereafter, the hostel was closed and the petitioner was transferred to Khalini office from where she was illegally terminated on 1.2.2007. No show cause notice was served upon her before termination and she was not given any opportunity of being heard. The petitioner remained employed for about thirteen years and she had completed more than 240 days in a single calendar year prior to her termination. After her termination, the respondent had employed other persons junior to her. Therefore, the respondent violated the provisions of section 25-F and 25-H of the Industrial Disputes Act, 1947. Consequently, petitioner prayed to set aside her dismissal order w.e.f. 1.2.2007 and prayed for reinstatement with full back wages and other consequential service benefits.

3. The respondents contested the claim by filing a reply wherein preliminary objections as to locus-standi, maintainability of the petition, suppression of material facts by the petitioner, estoppel, limitation and non-joinder of necessary parties were taken. On merits, the respondents denied that the petitioner was employed in 1994 as alleged by her. The respondent further denied that the petitioner worked as a cook in the Navbahar hostel and thereafter in the hostel at New Shimla, Sanjauli and finally again at Navbahar. As per respondent, they were not running any hostel at Navbahar. It was also denied that hostel was closed and thereafter, the petitioner was shifted to Khalini office where she worked till 1.2.2.007. Since, the petitioner was not working with the respondents therefore, there was no occasion to terminate her services, hence, there was no question of giving any opportunity of being heard to the petitioner. Hence, there was no violation of any provisions of Industrial Disputes Act, 1947 on the part of respondents. Consequently, respondents prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein she denied all the preliminary objections taken by the respondents in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the termination of the services of the petitioner is illegal and unjustified?
..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits and amount of compensation, the petitioner is entitled to?
..OPP.
3. Whether this petition is not maintainable as pleaded?
..OPR.
4. Whether this petition is bad for non joinder of necessary parties?
..OPR.
5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 : Become redundant.

Issue No. 2 : No.

Issue No. 3 : No.

Issue No. 4 : No.

Relief. : Reference answered as per award and no relief is granted to the petitioner.

Reasons for finding

Issue No. 1 & 2.

9. Both these issues are interlinked and can be disposed by a single finding.

10. After hearing both the parties and going through the record carefully, I am of the considered opinion that the petitioner is not entitled to any relief as prayed by her.

11. From the careful scrutiny of the evidence on record, I do not find sufficient evidence to establish that the petitioner was employed by the respondent and she had worked in the hostel of the respondents and finally in the Khalini office of the respondents. Consequently, there was no occasion of the respondents to terminate her services w.e.f. 1.2.2007. As such, there is no violation of any provisions of Industrial Disputes Act, 1947 on the part of respondents.

12. The respondents have categorically denied that petitioner was employed by them and she had worked as a workman under them. On behalf of respondents Shri Sunil Sharma, the Assistant Manager stepped into the witness box as RW-1 and he has categorically deposed that petitioner never remained on the roll of the respondents. His testimony is further revealing that petitioner never worked in the hostel of respondents at Navbahar and she also did not work in the Khalini office of the respondents and she was not terminated on 1.2.2007.

13. In the light of aforesaid testimony of RW-1 Shri Sunil Sharma, the burden was heavily upon the petitioner to prove that she remained employee of the respondents and she joined the respondent company in the year of 1994. In support of this plea, there is only bald statement of petitioner Bimla Negi. To my mind, this statement of petitioner is not sufficient to prove her case. In her cross-examination, she has made clear that no appointment letter was issued to her by the respondents. She has also failed to produce any receipt of the wages paid to her by the respondents. No document in any manner, whatsoever, was produced by the petitioner to show that she had in-fact worked under the respondents. She admitted that the attendance register was maintained in the office of the respondents, but, she did not produce in evidence any such attendance register to show that in-fact she had worked in the office of the respondents. There is no evidence on record to show that there is a hostel of respondents which was earlier running at Navbahar and thereafter it was shifted to New Shimla then to Sanjauli and finally again to Navbahar. So, in the absence of any evidence, it cannot be held that in-fact the petitioner had worked in the hostel of respondents and finally she was working in the Khalini office of the respondents.

14. On behalf of petitioner, strong reliance was made on the documents Ex. PW-1/A. Ex. PW-1/A which are relating to information obtained under Right to Information Act as to the EPF of the petitioner. The aforesaid documents are only revealing that the information as to the EPF was supplied but these documents do not reveal that the petitioner was contributing any amount towards EPF. Ex. PW-1/A is revealing that nomination form of Smt. Bimla Negi petitioner is not available in the office of Regional PF Commissioner, Shimla. So, Pw-1/A is not any proof to establish that petitioner Bimla Negi remained employee of the respondents.

15. Consequently, in the light of my aforesaid discussion, I do not find any evidence on record to establish that petitioner Bimla Negi served as a workman under the respondents. As the result, there is no question of terminating her services by the respondents w.e.f. 1.2.2007. Hence, the petitioner is not entitled to any service benefits as prayed by her. Since, she was not the employee of the respondents, therefore, there is no violation of section 25-F and 25-H on the part of respondents as alleged by the petitioner.

16. Accordingly, for the aforesaid reasons issue No.1 has become redundant and answered accordingly whereas issue no.2 is answered against the petitioner.

Issue No. 3.

17. From the perusal of record there is nothing to suggest that the petition is not maintainable as the petitioner has categorically pleaded herself to be the employee of respondents and has further pleaded that she was illegally terminated w.e.f. 1.2.2007. However, said plea could not be proved by the petitioner but as far as petition is concerned, it is maintainable. Hence, this issue is answered against the respondents.

Issue No. 4

18. From the careful perusal of record, there is nothing to suggest that the petition is bad for non-joinder of necessary parties, hence, this issue is also decided against the respondents.

Relief.

For the reasons recorded hereinabove, the claim of the petitioner is dismissed and the reference is answered accordingly and as such the petitioner is not entitled to any service benefits as prayed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1st day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 68 of 2009.
Instituted on. 17.8.2009.
Decided on 6.9.2012.

Daulat Ram S/o Shri Thali Ram R/o Village Urman BPO Munish Bhalli, Tehsil Rampur Bushahr, District Shimla, H.P.

...Petitioner.

Vs.

The District Forest Officer, Forest Department, Rampur Bushahr District Shimla, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : None.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Daulat Ram S/o Shri Thali Ram by Divisional Forest Officer Division Rampur Bushahr District Shimla H.P w.e.f. 1.8.2003 without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the above employer, as alleged by the workman, is proper and justified? If not, what relief of service benefits and amount of compensation above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that he joined respondent as beldar in January, 1998 and continued till 31.7.2003. On 1.8.2003, the petitioner was orally terminated by the respondent without any reason. The petitioner was told that whenever the work would be available, muster roll would be issued and he would be engaged on work but the petitioner was not engaged. The petitioner had worked continuously and completed 240 days in the calendar year prior to his termination. No notice under section 25-F was served upon the petitioner. The respondent engaged fresh workmen on work, hence, the principles of last come first go was not followed. As the result, the petitioner filed claim petition with the prayer to set aside his termination order dated 1.8.2003 and he also prayed that he be reinstated with all consequential service benefits along-with back wages.

3. In reply, the respondent took preliminary objections as to maintainability, estoppel and suppression of material facts by the petitioner. On merits, the respondent admitted that the petitioner was engaged on daily wages labourer in March, 1998 and he worked till 31.8.2008 at different places. It was stated that petitioner himself abandoned the work and did not turn up w.e.f. 1.9.2002 to 31.12.2005. He came back on 1.1.2006 and worked till 29.1.2008, thereafter, he again abandoned the job. Respondent denied that the petitioner worked till 31.7.2003. The petitioner only completed 240 days in 1999 and 2000 but he did not complete 240 days in a calendar year prior to 1.8.2003. Since, the petitioner willfully abandoned the job, therefore, he could not be reinstated. The respondent also denied that junior workmen to the petitioner were retained or fresh workers were engaged after the alleged termination of petitioner. Hence, there was no question of violation of provisions of section 25-B and 25-H of Industrial Disputes Act, 1947. Consequently, respondent prayed for the dismissal of petition.

4. Petitioner did not file any rejoinder. On the pleadings of the parties, the following issues are framed.

1. Whether the services of the petitioner were illegally terminated in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?
..OPP.
2. Issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled to?
..OPP.
3. Whether this petition is barred by limitation?
..OPR.
4. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard Ld. Dy. DA and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	:	No.
Issue No.2	:	Not entitled to any relief.
Issue No.3	:	No.
Relief.	:	Reference answered as per award and no relief is granted to the petitioner.

Reasons for finding

Issue No. 1.

8. After hearing the arguments and going through the record of the case, I am of the considered opinion that the petitioner could not prove that he was illegally terminated by the respondent in contravention of provisions of Industrial Disputes Act, 1947.

9. As per reference received in the Court, the petitioner challenged his termination w.e.f. 1.8.2003 on the ground that junior to him were retained by the respondent. In support of this contention, the petitioner could not lead any evidence whatsoever. The record is revealing that the petitioner availed so many opportunities to lead evidence, but in vain. The issues were framed on 15.6.2009 and on 7.9.2010 was the first date for the evidence of petitioner. Lastly, the case was fixed for the evidence of petitioner on 6.9.2012 when neither the petitioner nor any evidence on his behalf was present. Hence, in the absence of any evidence, it could not be held that after 1.8.2003, the respondent had retained junior workmen to the petitioner or fresh workmen were engaged by the respondent.

10. Moreover, the respondent had filed on record the seniority list of daily waged worker annexure R-2 which is revealing that the names of fifty one workmen. In the said list, the petitioner is mentioned at serial number fifty. Only one workman named Santosh Kumar had been shown junior to him but he has been also shown left the job. This seniority list is revealing that after 2003 Santosh Kumar junior to petitioner did not work for a single day till 2008. So, the annexure R-2 is specific proof to show that junior workman to petitioner was not retained by the respondent after 2003.

11. Although, the petitioner has filed the claim petition stating that before terminating him, no notice under section 25-F was served upon him as he had completed 240 days in the calendar year prior to his termination on 1.8.2003. As discussed hereinabove, the petitioner could not lead any evidence in support of this plea, first of all this plea is not tenable under law as this plea is beyond the scope of reference. Further, record is revealing that petitioner did not complete 240 days in a calendar year just before his termination w.e.f. 1.8.2003.

12. The respondent has filed on record the mandays chart of petitioner annexure R-1 for the year 1997-98 to 29.1.2008. This mandays chart is revealing that in August, 2003, the petitioner worked for 18 days and thereafter he abandoned the job and came back in Jan., 2006 and did work for 12 days. Prior to August, 2003 in a calendar year, the petitioner did not complete 240 days, hence, the provisions of section 25-F are not attracted. So, there was no legal requirement to serve any notice upon the petitioner under section 25-F of Industrial disputes Act, 1947.

13. Hence, in the light of my aforesaid discussion, there is nothing on record to show that the termination of petitioner w.e.f. 1.8.2003 is illegal and against the provisions of Industrial Disputes Act, 1947. Hence, this issue is answered against the petitioner.

Issue No. 2.

14. Since, issue No.1 has been decided against the petitioner, therefore, he is not entitled to any service benefit. Accordingly, this issue is decided against the petitioner.

Issue No. 3

15. Form the careful perusal of record, there is nothing to show that present petition is time barred. The reference was received in the Court on 17.8.2009 and petitioner filed the claim petition on 9.11.2009. As the result, this issue is decided against the respondent.

Relief.

For the reasons recorded hereinabove, while discussing aforesaid issues, the claim of the petitioner is dismissed and the reference is answered in affirmative. The petitioner has failed to establish that his services were wrongly and illegally terminated w.e.f. 1.8.2003 in violation of the provisions of Industrial Disputes Act, 1947. Hence, it is hereby held that the termination orders of petitioner are proper and justified. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of September, 2012 in the presence of parties counsel.

By order,
Sd/-

*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 34 of 2011.
Instituted on. 3.8.2011.
Decided on 5.9.2012.

Lal Chand S/o Shri Jagat Ram R/o Kaushalya Bhawan, Near SSN School, Govind Mohalla, Totu Shimla-11, H.P.

...Petitioner.

Vs.

The Director, Youth Services and Sports, Government of H.P. Shimla.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rohit Sharma, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the demand of Shri Lal Chand s/o Shri Jagat Ram daily wage driver, who was terminated from service w.e.f. April, 1999 without serving charge-sheet, without holding enquiry and complying with the provisions of the Industrial Disputes act, 1947 before the Director Youth Service and Sports, Government of H.P Shimla for his reinstatement on the basis of order dated 29.6.2004 of the Hon’ble H.P State Administrative Tribunal in O.A No. 3194/99 filed by him against the illegal termination is legal and justified? If yes, to what service benefits and relief, the above named workman is entitled to?”

2. The petitioner has filed the claim stating that he was engaged as a driver on daily wages by the respondent w.e.f. 9.5.1995. He worked without any break till February, 1999 when he was given break in service. However, he was re-engaged in March, 1999 and finally the services of petitioner were verbally terminated in April, 1999. The petitioner completed 240 days in the calendar year before his termination but he was not served any notice as required under section 25-F of the Industrial Disputes Act, 1947. The petitioner stated that for his illegal termination, he had filed an OA No. 3194/99 before the Administrative Tribunal which was disposed of vide order dated 29.6.2004 vide which the respondent was directed to consider the applicant for engagement as driver whenever vehicle would be available or post would be vacant. Thereafter, petitioner requested the respondent to reengage him, but in vain. Petitioner also stated that in April, 2009 one of the driver(s) of the respondent Shri Jarnail Singh got retired and petitioner requested the respondent to engage him, but the respondent did not pay any heed to his request. Hence, petitioner prayed that his termination order be declared null & void and he be reinstated in service with full back wages along-with all consequential benefits.

3. The respondent contested the claim by filing a reply wherein preliminary objections as to maintainability and want of provisions of Industrial Disputes were raised. On merits, respondent admitted that the petitioner was engaged as a driver on 9.5.1995. As per respondent, the petitioner was appointed for 80 days or till the joining of driver from General Administrative Department who was on deputation. The respondent denied that the petitioner worked till February, 1999 without any break and he completed 240 days in all the calendar years. It was admitted that petitioner was reengaged on 26.2.1999 and his services were dispensed with from April, 1999. The departmental vehicle for which the petitioner was engaged was declared un-serviceable and thereafter, auctioned. There was no justification to re-engage the petitioner as driver. The respondent admitted that petitioner had filed an OA No. 3194/99 before Administrative Tribunal wherein the respondent was only directed to consider the name of petitioner for re-engagement whenever vehicle would be available or post would be vacant. The respondent stated that in 2007,

new vehicle was purchased by the respondent when petitioner requested to reengage him but at the same time he approached Hon'ble High Court for the execution of order dated 29.6.2004. The respondent admitted that the driver namely Shri Jarnail Singh got retired on 30.4.2009. It was further stated that the Administrative Tribunal had only directed the respondent to consider the petitioner for re-engagement as driver but it was not incumbent upon the respondent to engage him. Moreover, the post in the department was to be advertised. The name of petitioner would be considered along-with other suitable candidates. Hence, the provisions of Industrial Disputes Act were not applicable to the facts in hand. Consequently, respondent prayed for the dismissal of the petition.

4. No rejoinder had filed by the petitioner. On the pleadings of the parties, the following issues are framed.

1. Whether the petitioner worked as daily wager under the respondent for continuous period of 240 days as alleged?
..OPP.
2. Whether the services of petitioner were illegally terminated by the respondent as alleged?
..OPP.
3. Whether the petition is not maintainable?
..OPR.
4. Whether the petition is hit by delay and latches?
..OPR.
5. Whether the provisions of Industrial Disputes Act, 1947 are not attracted in this case?
..OPR.
6. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Yes.
Issue No.3	No.
Issue No.4	No.
Issue No.5	No.
Relief.	Reference answered in affirmative as the termination of the petitioner is illegal and unjustified per operative part of award.

Reasons for finding

Issue No. 1, 2 & 5.

8. All these issues are interconnected and can be disposed of by a single finding.

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the services of petitioner were illegally terminated by the respondent. The record has established that the petitioner worked for continuous period of 280 days in a calendar year prior to his retrenchment, therefore, the provisions of section 25-F of Industrial Disputes Act, 1947 are applicable. Before termination of services of petitioner, he was not served with any notice under section 25-F by the respondent, as the result, the services of petitioner were illegally terminated.

10. From the pleadings of the parties, it is un-disputed that the petitioner was engaged as a driver on daily wages by the respondent on 9.5.1995. It is also not in dispute that initially the appointment of petitioner was for 80 days but the petitioner continued till February, 1999 when he was re-engaged and his services were terminated in April, 1999. It has come in evidence that during this period, notional break was given to the petitioner but this break was not make any difference as far as the continuous period of 240 days in a calendar year is concerned for the purpose of section 25-F of Industrial Disputes Act, 1947. The petitioner has categorically deposed that he worked from 1995 till 1999 continuously. This statement of petitioner is not disputed by the respondent as is evident from the cross examination of petitioner. Moreover, the testimony of witness of respondent RW-1 Ami Chand is also revealing that the petitioner was engaged in 1995 on daily wages vide order Ex. RW-1/A and he worked till February, 1999 and on 26.2.1999, vide order RW-1/B he was re-engaged and his services were terminated in April, 1999.

11. The mandays chart of petitioner from 9.5.1995 to 30.4.1999 Ex. RW-1/D and the summary of total number of days on which the petitioner worked from 9.5.1995 to April, 1999 Ex. P-4 are specific evidence to show that prior to his termination in April, 1999, the petitioner had worked for 240 days in a calendar year. As the result, the respondent was legally required to serve a notice of one month under section 25-F of Industrial Disputes Act, 1947 upon the petitioner before terminating his service or pay the wages for the period of notice along-with compensation to the petitioner but no such steps were taken by the respondent. Consequently, the violation of section 25-F of Industrial Disputes Act, 1947 is proved. Hence, the termination of petitioner in April, 1999 is null & void and illegal.

12. The record is further revealing that the petitioner had filed an OA No. 3194/1999 before the Administrative Tribunal which was disposed of vide order Ex. PW-1/C dated 29.6.2004 vide which the respondent was directed to consider the petitioner for re-engagement as driver whenever vehicle is available or the post is vacant. The respondent was bound by said order. The testimony of witness of respondent RW-1 Ami Chand has established that in 2007, a new vehicle was purchased by the respondent which shows that there was requirement of a driver. At the same time, he had deposed that on 30.7.2009, one Shri Jarnail Singh driver of respondent got retired. That means there was vacancy of driver after 30.4.2009. On the top of it, Ex. P-3 is the copy of letter dated 9.4.2009 from the respondent issued to the Principal Secretary (YSS) to the Government of Himachal Pradesh with the request to fill-up the vacant post of driver in the Directorate of Youth Services and Sports, H.P. Thus, there are sufficient evidence to establish that the re-engagement of petitioner as a driver by the respondent is justified as the post is lying vacant and vehicle is also available for the petitioner. The witness of respondent (RW-1) has admitted that after his termination, the petitioner had been coming to the department with the request to reengage him.

13. Hence, in the light of my aforesaid discussion, the petitioner is entitled to be reinstated in service as his termination as daily wage driver in April, 1999 is illegal, null & void and the termination orders are hereby set aside. The petitioner is also entitled to seniority and continuity in service. However, he is not entitled for back wages as it has come in the testimony of RW-1 Ami Chand that during the period in dispute, the petitioner had been driving taxi. That means he was gainfully employed and did not remain idle.

14. Accordingly, for the aforesaid reasons, issues no. 1 & 2 are decided in favour of petitioner whereas issue no.5 is decided against the respondent.

Issue No. 3

15. From the careful perusal of record, there is nothing to suggest that the petition is not maintainable in the present form. Hence, this issue is answered against the respondent.

Issue No. 4

16. I do not find delay and laches in filing of present claim petition. Hence, this issue is decided against the respondent.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered in affirmative as the termination of the services of the petitioner is illegal and unjustified. Consequently, the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions with seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 5th day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 30 of 2007.
Instituted on. 5.6.2007.
Decided on 20.9.2012.

Lalita Jindal W/o Shri Mukesh Kumar Jindal R/o Kandaghat, C/o Shri Ravi Bhushan Gupta,
Bus Stand Kandaghat, District Solan, H.P.

...Petitioner.

Vs.

The Divisional Forest Officer, Solan, Forest Division Solan, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri S.S Parmar, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the action of Divisional Forest Officer, Solan Forest Division Solan, H.P to terminate the services of Smt. Lalita Jindal W/o Shri Mukesh Kumar Jindal, Ex. Lady Forest Guard w.e.f. 30.4.1996 due to alleged her willful absence from duty and after affording her ample opportunities to join her duties and complying the procedure under Rule-5 of Central Civil Services (Temporary Services) Rules, 1965 is proper and justified? If not, what relief of service benefits Smt., Lalita Jindal Ex- Lady Forest Guard is entitled to ?”

2. The petitioner has filed the claim stating that she was appointed as Lady Forest Guard in the Forest Department on 28.2.1986 and remained posted in Solan Forest Division till 30.4.1996. She proceeded on leave w.e.f. 7.8.1995 to 9.8.1995 due to illness of her mother-in-law. However, the petitioner could not join her duties and requested to extend her leave through telegram. She came to join her duties on 1.5.1996 when her joining report was not accepted on the ground that her services were already terminated. The respondent alleged that a notice was published in the Tribune dated 23.3.1996 requiring petitioner to join her duties, failing which, the services of petitioner would be terminated. The termination of petitioner was not in accordance with law as her retrenchment was against the provisions of Industrial Disputes Act, 1947. Before termination, no notice was served upon her. Hence, the provisions of section 25-F and 25-N of Industrial Disputes Act, 1947 were violated. The petitioner further stated that after her termination, the respondent employed other junior workmen, so, section 25-G of Industrial Disputes Act was also violated. The petitioner was not given any opportunity of being heard before the termination of her services as such the petitioner challenged her termination order and prayed that she be re-engaged in service with all consequential service benefits.

3. The respondent contested the claim by filing a reply wherein preliminary objection as to maintainability of the petitioner was raised stating that the petitioner was appointed as Forest Guard under R&P Rules and she was governed by the provisions of CCS conduct Rules. As such, her appointment was not governed by the provisions of Industrial Disputes Act, 1947. On merits, the respondent stated that the petitioner joined the services on 28.2.1986 as Lady Forest Guard and she worked uptill 6.8.1995. Initially, she proceeded on three days casual leave w.e.f. 7.8.1995 to 9.8.1995 but did not join her duties on 10.8.1995 and applied for extension of leave for fifteen days by sending a telegram. Again on 14.9.1995, the extension of leave was prayed for on the ground of illness of her mother-in-law but did not join duties, consequently, a telegram was sent to her on 28.12.1995 asking her to join duties at once. The petitioner did not respond to the said telegram. Finally, a notice was issued in the newspaper on 23.3.1995 asking the petitioner to join her duties. Consequently, her services were terminated on 30.4.1996 following the due procedure under CCS conduct Rules. The proper procedure was followed by the DFO under Rule-5 of CCS (Temporary Service) Rule, 1965. The services of petitioner were not terminated under the provisions of Industrial Disputes Act, 1947, hence, there was no question of violation of any provisions of Industrial Disputes Act, 1947. As the result, the respondent prayed for the dismissal of the petition.

4. No rejoinder had filed by the petitioner. On the pleadings of the parties, the following issues are framed.

1. Whether the services of the petitioner have been terminated w.e.f. 30.4.1996 illegally and in an unjustified manner without complying with the procedure under Rule-5 of Central Civil Services (Temporary Services) Rules, 1965 as alleged?

. .OPP.

2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to?
..OPP.
3. Whether this petition is not maintainable as alleged in preliminary objection No.1?
..OPR.
4. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record as well as written arguments filed by the petitioner carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	:	Petition is not maintainable, hence, this issue is answered accordingly.
Issue No.2	:	Not entitled to any relief from this Court.
Issue No.3	:	Yes.
Relief.	:	Reference answered as per operative part of award.

Reasons for finding

Issue No.1, & 3.

8. Both these issues are interconnected and can be disposed of by a single finding.

9. Both the parties have led evidence in support of their respective contentions. The petitioner has alleged that she was a workman and governed under the provisions of Industrial Disputes Act, 1947, whereas on the other hand, respondent has alleged that the petitioner was a regular government employee governed under the CCS Conduct Rules. So, the provisions of Industrial Disputes were not applicable.

10. After hearing both the parties and going through the record carefully, I find substance in the preliminary objection taken by the respondent that the petition is not maintainable on the simple ground that the services of petitioner were not governed by the provisions of Industrial disputes Act, 1947.

11. The petitioner has admitted that she was appointed as Lady Forest Guard in the Forest Department on 28.2.1986. The appointment letter of petitioner is Ex. PW-5/A is revealing that the petitioner was appointed as Forest Guard in the pay scale of Rs. 400-10-450/15-525/15-600/20-660 in the Forest Division, Solan w.e.f. 28.2.1986. In pursuance of said order, the petitioner joined, vide joining report Ex. R-1. Since, the petitioner was appointed as a regular Forest guard in the Forest Division, therefore, her services were governed under CCS Conduct Rules.

12. On behalf of petitioner reliance was made on the copy of order passed by Hon'ble High of H.P in CWP No. 1005/2005 dated 11.12.2006 Ex. PW-7. The back-ground of this order is that the petitioner had served a demand notice which was sent to Labour-cum-Conciliation Officer Solan Zone who vide his order dated 23.10.2004 had informed the petitioner that jurisdiction lies

with H.P Administrative Tribunal, Shimla for regular appointed employees. The petitioner challenged said order before Hon'ble High Court by filing a CWP No. 1005/2005 which was disposed of vide order Ex. P-7 wherein the Hon'ble High Court passed the following orders:

“We find that the said order is wholly without jurisdiction. The Labour Officer-cum-Conciliation Officer has no jurisdiction under the Industrial Disputes act to reject the claim of a workman. His authority is only to try and reconcile the dispute between the parties and in case the reconciliation is not possible, then he has to sent the matter to the appropriate Government, i.e State Government, in the present case, for making a reference to the Labour Court or Tribunal. It was not within the domain of Labour Officer-cum-Conciliation Officer to reject the claim and direct the petitioner to approach the Himachal Pradesh State Administrative Tribunal. In view of the above discussion, the writ petition is allowed and the order of the Labour Officer-cum-Conciliation Officer, Solan (Annexure P-6), is set aside. He is directed to send his report to the State Government within six weeks from today, which shall then take appropriate further action in accordance with law within eight weeks thereafter.”

13. I have carefully perused the aforesaid order of Hon'ble High Court which is specific to the effect that order of Labour-cum-Conciliation Officer was without jurisdiction. But, Hon'ble High Court has nowhere held that the services of petitioner were governed by the provisions of Industrial Disputes Act, 1947. Therefore, the aforesaid order passed by the Hon'ble High Court does not give any jurisdiction to this Court to adjudicate the reference in question.

14. Moreover, the reference in hand is clearly revealing that the services of petitioner were terminated by divisional forest Officer, Solan w.e.f. 10.4.1996 under Rule-5 of CCS (Temporary Service Rule, 1965). On behalf of respondent RW-1 Ramesh Negi appeared in the witness box who in his cross-examination has stated that the services of petitioner were terminated under CCS Conduct Rules.

15. If CCS Conduct Rules are applicable to the services of petitioner, therefore, she was a regular government employee and for the same at the relevant time, the jurisdiction lies with the State Administrative Tribunal. Since, State Administrative Tribunal now stands abolished, therefore, the petitioner has got remedy to approach the regular Civil Court or the Hon'ble High Court for challenging her termination order.

16. Since, the provisions of Industrial Disputes Act, 1947 are not applicable to the present case, therefore, there is no occasion for this Court to see whether the provisions of section 25-F, 25-N and 25-G have been violated or not.

17. In the light of my aforesaid discussion, the claim petition filed by the petitioner is not maintainable as this Court has got no jurisdiction to answer the reference in question to the effect whether the services of petitioner terminated under Rule-5 of CCS (Temporary service Rules, 1965) is proper and justified or not. Hence, issue no.3 is answered in affirmative whereas issue no.1 is decided accordingly.

Issue No. 2

18. For the reasons to be recorded hereinabove, while deciding issues no. 1 & 3 , the claim petition filed by the petitioner is not maintainable, hence, the petitioner is not entitled to any service benefits from this Court. Accordingly, this issue is answered against the petitioner.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is dismissed being not maintainable before this Court as the petitioner has got remedy to challenge her termination orders before the regular Civil Court or Hon'ble High Court. In view of these findings, the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 130 of 2010.
Instituted on. 4.12.2010.
Decided on 12.9.2012.

Madan Thakur S/o Shri Raghubir Singh R/o Kapoor Niwas, House No. 4, Sector-3,
Parwanoo, District Solan, H.P.

...Petitioner.

Vs.

M/s Vaishnavi Cosmetics Industries Pvt. Ltd., Village Buranwala, Tehsil Kasali, District
Solan, H.P.

...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Sharma, AR.
For respondent : Shri Rahul Majahan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:
“Whether verbal termination of services of Shri Madan Thakur S/o Shri Raghubir Singh (Operator-cum-Supervisor) by the management of M/s Vaishnavi Cosmetics Industries (P) Limited, Village Buranwala, Tehsil Kasauli, District Solan H.P w.e.f. 01.02.2010 without serving chargesheet, without holding enquiry and without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what back wages service benefits and relief the above named workman is entitled to? ”

2. The petitioner has filed the claim stating that he was engaged as Operator-cum-Fitter by the respondent w.e.f. 3.12.2007. He completed more than 240 days continuously in a calendar year before his illegal termination on 1.2.2010. No notice was served upon the petitioner and he

was terminated without any charge-sheet as well as without holding any enquiry. As such, his termination is against the provisions of Industrial Disputes act, 1947. The petitioner served a demand notice upon the respondent but no settlement could be arrived at during conciliation proceedings. Hence, petitioner filed the claim petition with the prayer that his termination be set aside and he be reinstated in service with back wages along-with other consequential service benefits.

3. In reply, the respondent took preliminary objections as to maintainability as well as gainfully employee status of petitioner. On merits, the respondent stated that initially the petitioner was employed as an Operator-cum-Fitter but he was subsequently promoted as Supervisor and he was performing supervisory function. As the result, he was not a workman and there was no industrial dispute under section 2(k) of Industrial Disputes Act, 1947. The respondent denied that the petitioner had completed 240 days in a calendar year as a workman. The petitioner was appointed as supervisor in toilet cleaner section where he did not perform his duties with responsibilities. Thereafter, he was transferred to Cream Section and further transferred to Deo Plant as supervisor. The petitioner was not interested in performing the job of supervisor and he even threatened A.G.M Shri Gurmit Singh and insulted him. Consequently, petitioner was terminated but he was not a workman, therefore, the provisions of Industrial Disputes Act, 1947 are not applicable. Accordingly, respondent prayed for the dismissal of the petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues are framed.

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 1.2.2010 is in violation of the provisions of Industrial Disputes Act, 1947?
..OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?
..OPP.
3. Whether the petitioner is not a workman?
..OPR.
4. Whether the petitioner is gainfully employed?
..OPR.
5. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	No.
Issue No.2	Not entitled to any relief.
Issue No.3	Yes.
Issue No.4	Become redundant.
Relief.	Reference answered as per award and no relief is granted to the petitioner.

*Reasons for finding**Issue No. 1 & 3.*

8. Both these issues are interlinked and can be disposed by a single finding.
9. In the light of arguments of both the parties as well as evidence on record, it stands established that the petitioner was not terminated as a workman but he was performing the duties of a supervisor as such, his termination was not as a workman. Consequently, petitioner is not entitled for the protection of provisions of Industrial Disputes Act, 1947.
10. It is settled law that only a workman is entitled for the protection of provisions of Industrial Disputes Act, 1947 and he cannot be terminated or retrenched from service in violation of provisions of Industrial Disputes Act, 1947.
11. Thus, the main question for determination is whether the petitioner was terminated as a workman or he was discharging the functions of a supervisor. Section 2(s) of Industrial Disputes Act, 1947 defines workman and section 2(s)(iv) says that a workman does not include any person who being employed in a supervisory capacity. That means a person discharging the functions of supervisor is not a workman.
12. The petitioner has alleged in his testimony that he was an Operator-cum-Fitter and he was engaged on 3.12.2007 by the respondent. In his crossexamination, he initially denied that he was engaged as a supervisor and also denied that he was a supervisor in toilet cleaner section. Thereafter, he was transferred as supervisor to Cream section and further transferred to Deo Plant but in his further crossexamination, he admitted that letter Ex. RA was issued to him by the Assistant Manager (HR) of respondent. He also admitted that letter Ex. RB was written by him. To my mind, both these documents are material and important evidence on record. The letter Ex. RA was addressed to the petitioner wherein he has been addressed as supervisor Deo Plant and in letter Ex. RB dated 28.12.2009, the petitioner has admitted himself to be a supervisor in Deo Plant. These documents are sufficient to establish that in the year of 2009, the petitioner was supervisor in the Deo Plant of respondent company.
13. On behalf of respondent Shri Anil Kumar, Assistant Legal Manage stepped into the witness box as RW-1 and deposed all the facts stated in the reply by the respondent. His testimony is revealing that the petitioner was working as a supervisor and he was terminated on 1.1.2010. He tendered in evidence documents Ex. RC to Ex. RJ. These documents are correspondence between petitioner and the managers of the respondent company. These documents are revealing that initially petitioner was Fitter-cum-Operator but subsequently he was promoted as supervisor. Initially he was posed as supervisor in toilet cleaner branch then he was transferred to Cream section and finally he was performing the duties of supervisor in Deo Plant.
14. On behalf of petitioner, strong reliance was made on documents Ex. RM, Ex. RN, Ex. RO which were admitted by RW-1 Shri Anil Kumar. These documents are only revealing that in the years of 2007 and 2008, the petitioner was Fitter and Assistant Operator and thereafter he was promoted to Operator liquid section of respondent company. But, these letters are not sufficient to prove that the petitioner was a workman when he was terminated in the year of 2010.
15. In the light of the documents discussed hereinabove, especially the admitted document of petitioner Ex. RB wherein he has stated himself to be a supervisor in Deo Plant on 28.12.2009, I have no hesitation to hold that the petitioner was not a workman but he was supervisor when his services were terminated. As the result, he is not entitled for the protection of

provisions of Industrial Disputes Act, 1947 because he does not fall within the definition of workman as defined under section 2(s)(iv) of Industrial Disputes act, 1947.

16. Accordingly, for the aforesaid reasons issue no.1 is decided against the petitioner whereas issue no.3 is decided in favour of respondent.

Issue No. 3.

17. For the reasons recorded hereinabove while deciding issue no. 1 & 3, the petitioner is not entitled to any relief as prayed for by him. Hence, this issue is decided against the petitioner.

Issue No. 4

18. For the reasons recorded hereinabove while deciding aforesaid issues, the petitioner is not a workman and he is not entitled to any relief from this Court, therefore, this issue has become redundant, hence, decided accordingly.

Relief.

For the reasons recorded hereinabove, the claim of the petitioner is dismissed and the reference is answered accordingly and as such the petitioner is not entitled to any service benefits as prayed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 12th day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 54 of 2009.
Instituted on. 10.8.2009.
Decided on 1.9.2012.

Ramesh Chand S/o Shri Dilmee Ram R/o Village Nohra, P.O Khagna, Tehsil Chopal,
District Shimla, H.P. ...Petitioner.

Vs.

1. State of HP through Secretary (PWD) to the Government of H.P, Shimla-2.
 2. Engineer-in-Chief, HPPWD, US Club Shimla-1.
 3. Executive Engineer, Chopal Division, HPPWD Chopal, District Shimla, H.P.
- ...Respondents

Reference under section 10 of the Industrial
Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Ramesh Chand S/o Shri Dilmee Ram by the Executive Engineer, HPPWD Division, Chopal District Shimla H.P w.e.f. 26.1.1999 on the allegation of misconduct and tempering of office record is proper and justified? If not, what relief of service benefits including seniority and compensation the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was engaged on daily wages by the respondents in September, 1991. The petitioner successfully completed 240 days in the calendar year. He was not given work charge status as well as not regularised after the completion of eight years. On 26.2.1999, the petitioner was served with one month's notice of retrenchment of services which was not in accordance with law. No enquiry was conducted against the petitioner and principles of natural justice were not complied with. In fact, it was alleged that the petitioner had tempered with the official record, for the same a criminal case was registered against him wherein the petitioner was acquitted by the Ld. JMFC Chopal on 30.7.2002. As the result, the retrenchment orders of petitioner dated 26.2.1999 were null and void. The retrenchment of petitioner was against section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Hence, petitioner prayed for set aside the retrenchment and prayed that he be reinstated with full back wages and other consequential service benefits.

3. The respondents contested the claim by filing a reply wherein preliminary objections as to maintainability, delay and laches and cause of action were raised. On merits, respondents admitted that the petitioner was engaged as a beldar in 1999. It was stated that the petitioner completed 240 days w.e.f. 1992 to 1998 but in the year of 1991, he worked for 59 days whereas in the year of 1999 he worked for 29 days.

Since, petitioner did not fulfill the criteria for regularization as per the policy of Government, therefore, he was not regularised. Respondents further stated that the petitioner was served with one month's notice and he was retrenched w.e.f. 26.2.1999.

In fact the petitioner was deployed in the division office of Executive Engineer, PWD, Chopal to assist the dealing hand. It was found that petitioner had tempered with the official record with the mala fide intention, so, the respondents were having no option but to terminate the services of the petitioner. The petitioner was served with the notice as required under section 25-F of the Industrial Disputes Act and he was also paid the compensation. The Auditor Chopal Sub Division found the tempering of record by the petitioner and the matter was brought to the notice of Assistant Engineer, Chopal Sub Division on 9.11.1998. Thereafter, the matter was referred to the Superintending Engineer, 2nd Circle, HPPWD Shimla. Subsequently, the enquiry committee was constituted and the enquiry was conducted against the petitioner. The enquiry committee submitted its report to the Executive Engineer, Chopal on 24.11.1998 vide which the petitioner was found guilty. Thereafter, the retrenchment notice was served upon the petitioner. During enquiry, principles of natural justice were followed. Consequently, respondents prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondents in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the termination of the services of the petitioner on the allegation of misconduct and tempering of office record is unjustified? OPP...
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP...
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 Yes.

Issue No.2 Entitled to reinstatement in service with seniority and continuity along-with back wages @ 25%.

Relief. Reference answered in negative as the termination of the petitioner is improper and unjustified per operative part of award.

Reasons for finding.

Issue No.1.

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of services of petitioner by the respondents is not justified for the reasons to be recorded hereinafter.

10. The evidence on record established that the petitioner was terminated from the service on the allegation that he had tempered with the office record. This fact is not disputed by the respondents as is evident from the reply. Ex. RC is the notice of retrenchment served upon the petitioner by Executive Engineer, Chopal Division dated 6.2.1999 and it is revealing that one month's notice of retrenchment along-with compensation was given to the petitioner as required under section 25-F of Industrial Disputes Act, 1947. But I am of the opinion that the termination of petitioner does not fall within the definition of retrenchment.

11. As it is in not disputed that the petitioner was terminated from the service on account of allegation of tempering with the office record. So, I am of the opinion that the termination of petitioner was dismissal from the service and not retrenchment. Section 2(oo) of Industrial Disputes Act, 1947 has defined retrenchment which means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.

12. In the present case, it is the case of the respondents that an enquiry was conducted against the petitioner wherein he was found guilty of tempering with the office record. That means a disciplinary action was taken against the petitioner and as the result, he was terminated from

service. Consequently, the termination of petitioner does not fall within the definition of retrenchment as defined under section 2(oo) of Industrial Disputes Act, 1947.

13. If, the petitioner was not retrenched from the service by the respondents, then, there is no application of section 25-F, 25-G and 25-H of Industrial Disputes Act, 1947. These provisions of law are applicable in the case where a workman is retrenched by the employer. Therefore, even if the notice Ex. RC is revealing the retrenchment of petitioner after complying with the provisions of section 25-F of Industrial Disputes Act, to my mind it would not make any difference. As legally speaking for the reasons discussed hereinabove the petitioner was not retrenched but dismissed from service as the result of disciplinary action

14. The petitioner Ramesh Chand in his testimony as PW-1 has stated that regarding the alleged misconduct to the charges of tempering with the office record, no proper enquiry was conducted and principles of natural justice were violated. In view of reply filed by the respondents, it is clear that enquiry committee was constituted by the XEN, HPPWD Chopal and enquiry committee submitted its report Ex. PC/3 and held the petitioner liable for tempering with the office record. This fact has also been deposed by RW-1 Shri T.S Chandel, Junior Engineer, HPPWD Sub Division Chopal but there is nothing in his testimony that before enquiry by the committee, a show cause notice was served upon the petitioner and he was afforded an opportunity to explain his position. At the same time his testimony is also sufficient to show that only a preliminary enquiry was conducted by the enquiry committee which submitted its report Ex. PC/3. No charge-sheet was served upon the petitioner and no proper departmental enquiry was conducted against him. Hence, in the absence of any regular enquiry, the services of petitioner could not be terminated. It has caused a serious prejudice to the petitioner as he was not afforded due opportunity to defend himself. So, certainly there is violation of principles of natural justice. Here, I am supported by law laid down by Hon'ble Supreme Court of India in the matter of (2000) 3 S.C.C 588, in which it has been held that the termination is punitive and if it is after preliminary enquiry and not on the basis of regular enquiry then said termination is invalid. Similar view has been taken by Hon'ble High Court of H.P in the matter of 1988 (2) Sim. L.C 46. Therefore, in the absence of proper regular enquiry against the petitioner, his termination orders are not sustainable under law and liable to set aside being not justified.

15. On behalf of respondents Ld. Dy. DA has relied upon the cross examination of petitioner wherein he admitted that during enquiry he had admitted himself to be liable for the tempering with the office record. But, to my mind this admission cannot be taken into account to justify the termination order of the petitioner. As stated hereinabove, petitioner was not served any chargesheet and before that no show cause notice was served upon him and on the top of it no regular enquiry was conducted against the petitioner. Only on the basis of preliminary enquiry, the petitioner cannot be thrown out of the service. Accordingly, this issue is answered in favour of the petitioner.

Issue no.2

16. For the reasons to be recorded hereinabove while discussing issue no.1, the termination orders of the petitioner are hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions along-with seniority and continuity. However, taking into account the facts and circumstance of the case as the petitioner was terminated in the year, 1999, so, he is also held entitled to back wages @ 25%. Accordingly, this issue is answered in favour of the petitioner.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered in negative as the termination of the services of the petitioner is improper and

unjustified. Consequently, the petitioner is entitled to reinstatement in service with immediate effect on the same terms and conditions with seniority and continuity along-with back wages @ 25%. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1st day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref. 38/2011.

Rajesh Kumar Vs. M/s GMP Technical solution, District Solan.

4.9.2012

Present: None for the petitioner.
Ms. Kumud Thakur, Advocate vice csl. for respondent no.1.
Shri Tek Chand, Advocate for respondent no.2.

It is 10.35 AM. Be called again.

Presiding Judge,
Labour Court, Shimla.

Case called again.

Present: None for the petitioner.
Ms. Kumud Thakur, Advocate vice csl. for respondent no.1.
Shri Tek Chand, Advocate for respondent no.2.

It is 12.25 PM but none appeared on behalf of the petitioner. Be called after lunch.
Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present: None for the petitioner.
Ms. Kumud Thakur, Advocate vice csl. for respondent no.1.
Shri Tek Chand, Advocate for respondent no.2.

It is 2.30 PM. Case called again. Today the case was fixed for filing of claim by the petitioner in support of his contention in order to answer the reference in question. Neither the petitioner nor any other authorized person on his behalf is present.

There is no claim on behalf of the petitioner. So, petitioner could not lead any evidence in support of his contention. Consequently, in the absence of any claim and evidence on behalf of petitioner, he has miserably failed to show that his termination by The General Manager M/s GMP Technical solution, Village Kurawala, P.O Mandhala, District Solan (Principal employer) and M/s S.S Engineering, Near Bus Stand Baddi, District Solan, H.P (Contractor) w.e.f. 5.11.2008 is illegal and unjustified. The following reference was received from the appropriate government for adjudication:

“Whether the termination of services of Shri Rajesh Kumar S/o Shri Ram Pratap Village-Bada Godam, P.O Kherawali, District Panchkula, Haryana by i) The General Manager M/s GMP Technical solution, Village Kurawala, P.O Mandhala, District Solan (Principal employer) ii) M/s S.S Engineering, Near Bus Stand Baddi, District Solan, H.P (Contractor) verbally w.e.f. 5.11.2008 is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from above named employers?”

In the absence of any evidence, this reference is answered in affirmative and as such the petitioner is not entitled to any relief as the termination of petitioner Shri Rajesh Kumar by The General Manager M/s GMP Technical solution, Village Kurawala, P.O Mandhala, District Solan (Principal employer) and M/s S.S Engineering, Near Bus Stand Baddi, District Solan, H.P (Contractor) w.e.f. 5.11.2008 is legal and justified. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:

4th September, 2012.

Presiding Judge,
Labour Court, Shimla.

Ref. 39 of 2008.

Dharam Chand Vs/ Hotel oberoi Clarks, Shimla.

7.9.2012

Present:

Petitioner in person.

Shri Rahul Mahajan, Advocate for respondent.

Today, petitioner entered into a settlement with the respondent. On behalf of respondent, he received a cheque of Rs. 70,000/- (Rs. Seventy Thousand only) bearing cheque no. 176262 dated 6.9.2012 as full & final settlement. Statement of petitioner recorded wherein he has stated that he received a cheque of Rs. 70,000/- (Rs. Seventy Thousand only) from the respondent and now there was no dispute between the parties. As the result of said settlement, he prayed for withdraw the claim petition.

In the light of aforesaid settlement arrived at between the parties, the claim petition stands disposed of and the reference is answered accordingly. In the light of said settlement the award is hereby passed. It is made clear that said settlement shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.

7/9/2012.

Presiding Judge,
Labour Court, Shimla.

Ref.266/2002

Sh Gulzar Singh V/s G.M. Eicher, Parwanoo.

20/9/2012

Present:

Petitioner in person with Shri Niranjana Verma, Advocate.

Shri Arun Kumar, Advocate for respondent no.1

Shri Rakesh Kumar, Advocate for respondent no.2.

Today, the petitioner and respondent no.2 i.e M/s Eicher Demn, Parwanoo entered into a settlement in this reference vide which respondent no.2 (M/s Eicher Demn, Parwanoo) agreed to pay lump-sum amount of Rs. 4.70 lakhs (Rs. Four Lakhs Seventy Thousand only), to the petitioner as full & final settlement between the parties. This offer is accepted by the petitioner. Statements of Ld. Counsel for respondent no.2 and petitioner to this effect were recorded. Petitioner has also stated that in view of said settlement he has got no claim left towards the respondents in any manner whatsoever.

In the light of aforesaid settlement this claim petition is decided and the reference is answered accordingly. It is made clear that the respondent no.2 (M/s Eicher Demn, Parwanoo) shall make the payment of aforesaid amount of Rs. 4.70 lakhs (Rs. Four Lakhs Seventy Thousand only) to the petitioner on or before 31/10/2012 failing which petitioner shall be entitled to the interest @ 9% per annum. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

File, after completion, be consigned to records.

Announced.
20/9/2012.

Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 61 of 2008.
Instituted on. 17.11.2008.
Decided on 6.9.2012.

Roshan Lal S/o Shri Humbi Ram R/o village Kuki, P.O Darkoli, Tehsil Rampur Bushahr, District Shimla, H.P. ...Petitioner.

Vs.

1. The Secretary, HPSEB.
 2. Executive Engineer, Electrical Division HPSEB Rampur Bushahr, District Shimla, H.P. ...Respondents
- Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Lavenesh Kanwar, Advocate.
For respondent : Shri Chandan Goel, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

1. ***“Whether action of the employer i.e The Executive Engineer, Electrical Division HPSEB Rampur Bushahr, District Solan, H.P not to give workcharge status to Shri Roshan Lal s/o Shri Humbi Ram but to give work charge status to namely S/Shri Mangat Ram, Kedar Singh, Bhajan Dass, Prakash Singh, Prakesh Chand, Jaswant***

Singh, Lachhmi Dass, Joginder Singh, Roshan Lal and Babu Ram who are junior to workman Shri Roshan Lal is proper and justified? If not, to what relief and compensation the above worker is entitled to ? ”

2. “Whether action of the employer i.e The Executive Engineer, Electrical Division HPSEB Rampur Bushahr, District Solan, H.P to again terminate the services of Shri Roshan Lal S/o Shri Humbi Ram vide notice no. HPSEB/RED-E-19(A)/08-09-3493-98 dated 25.10.1998 without paying any retrenchment compensation as provided under Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of service benefits including seniority and compensation the above worker is entitled to?”

2. The petitioner has filed the claim stating that he was engaged as a beldar in the year of 1992 in HPSEB Sub Division Taklech, District Shimla under Rampur Bushahr Division. The petitioner continuously worked and completed 240 days in each calendar year till 1998 when he was disengaged from services on 25.10.1998. Thereafter, the respondents engaged new persons. Feeling aggrieved and dissatisfied with his disengagement, the petitioner preferred OA No. 2812/99 before the Administrative Tribunal wherein interim relief was granted to the petitioner and he was allowed to continue. The O.A. was accepted by Administrative Tribunal vide order dated 9.11.2001 and it was held that the petitioner was illegally disengaged by the respondents and respondents were directed to re-engage the petitioner. However, the respondent preferred civil writ petition no. 766/2002 before the Hon'ble High Court which was accepted vide judgment dated 22.4.2008 and order of State Administrative Tribunal dated 9.11.2001 was set aside on the ground that State Administrative Tribunal was having no jurisdiction to decide the case. However, Hon'ble High Court directed if industrial dispute was raised by the petitioner, same would be considered by the Labour Officer and it would be referred to State Government within six months. In pursuance of the said order, the petitioner sent a demand notice to the Labour and Conciliation Officer and consequently the reference was received in this Court. The record is revealing that in the original reference the date of disengagement of petitioner was wrongly mentioned as 25.7.2008 but by the order of Hon'ble High Court said date was corrected to be 25.10.1998. The petitioner has stated that after his engagement in 1992, other persons were also engaged by the respondents but they were not disengaged on 25.10.1998. So, the respondent violated the principles of first come last go. The junior persons were allowed to continue in service. The petitioner stated that S/Shri Mangat Ram, Kedar Singh, Bhajan Ram, Prakash Chand, one another Prakesh Chand joined as beldar in 1994 whereas Shri Jaswant Singh joined in 1995 and Shri Lachhamn Dass joined in 1996 and they were given work charge status in the years of 2002 and 2007 respectively. Hence, petitioner prayed that his termination order dated 25.10.1998 be declared null & void against the provisions of section 25-G and 25-H of Industrial Disputes Act, 1947 and petitioner further prayed that he was also entitled to be regularised and given work charge status as per state government policy. Hence, the present claim petition was filed.

3. In reply respondents took preliminary objections as to maintainability, estoppel and limitation. On merits, the respondents admitted that the petitioner was engaged on 17.3.1992 and he was disengaged on 25.10.1998. The respondents stated that during this period, petitioner never completed 240 days in a calendar year. The respondents admitted that petitioner filed an OA before State Administrative Tribunal which was decided on 9.11.2001 and thereafter, writ was filed before the Hon'ble High Court which was allowed and the order of State Administrative Tribunal dated 9.11.2001 was set aside. The respondents stated that the petitioner remained irregular and absent from duties whereas other persons engaged by the respondents were sincere and regular and they completed 240 days in a calendar year, therefore, as per the government policy, they were given work charge status. Consequently, respondents prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondents in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the action of respondent no.2 in not giving work charge status to the petitioner is not proper and justified as alleged? OPP...
2. Whether the termination of the services of the petitioner as per order dated 25.10.1998 is illegal and unjustified being in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? OPP...
3. If issue no.1 & 2 or one of them is proved, to what service benefits the petitioner is entitled to? OPP...
4. Whether the petitioner is stopped from filing this claim petition. OPR. . .
5. Whether the petition is time barred? OPR...
6. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	Partly yes.
Issue No.2	Yes.
Issue No.3.	Entitled to reinstatement in service with seniority and continuity but without back wages. Further, respondent no.2 is directed to consider the case of the petitioner for workcharge status as per the criteria of Government policy.
Issue No.4	No.
Issue No.5	No.
Relief.	Reference answered in negative as the termination of the petitioner is improper and unjustified per operative part of award.

Reasons for finding

Issue no.1 & 2.

9. Both these issues are interconnected and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of services of petitioner w.e.f. 25.10.1998 by the respondents is illegal and unjustified being in contravention of section 25-G and 25-H of the Industrial Disputes Act, 1947.

11. From the pleadings of the parties, it is not disputed fact that the petitioner was engaged as a beldar on daily wages by the respondents in 1992 and his services were terminated on

25.10.1998. Although, the petitioner has alleged that till 25.10.1998, he completed 240 days in a calendar year but in support of this plea, I do not find sufficient evidence on record. On behalf of respondents, it has been stated that the petitioner was habitual absentee and he used to leave the job in between and due to this reason, he could not complete 240 days in a calendar year. There is nothing specific in the testimony of petitioner who appeared in the witness box as PW-1 to show that he had completed 240 days in a calendar year.

12. The petitioner has examined PW-2 Surinder Kumar, Junior Engineer, HPSEB Rampur who has admitted in his cross examination that from 17.3.1992 to 24.9.1998, the petitioner did not complete 240 days in a calendar year. This witness produced in evidence the mandays chart Ex. PX which is proving this fact that during aforesaid period, petitioner did not complete 240 days in a calendar year. As the result, there was no legal requirement to serve a notice under section 25-F before the termination of services of petitioner. However, at the same time, it has come in evidence that after the engagement of petitioner in 1992, respondents engaged other persons also on daily wages. The petitioner has deposed this fact and further PW-2 Surinder Kumar produced in evidence the muster rolls Ex. PW-2/A to Ex. PW-2/z-127. These muster rolls are sufficient proof to establish that after 1992 and till 25.10.1998, the respondents engaged other workmen on daily wages. In para 8 of the reply, the respondents have stated that the persons who were engaged after petitioner remained sincere and did not remain absent from duties and completed 240 days in a calendar year. That means there is a specific admission on the part of respondents that after the dis-engagement of petitioner other persons were also engaged by them.

13. Thus, on 25.10.1998 when the services of petitioner were terminated, the respondents should have retrenched junior persons to the petitioner as per the principles of first come last go which is envisaged under section 25-G of Industrial Disputes Act, 1947. Further, the muster rolls Ex. PW-2/z-88 to Ex. PW-2/z-127 are sufficient proof to establish that after 25.10.1998, the work was available with the respondents and for the same respondents issued muster rolls after 25.10.1998 and engaged other persons on daily wages. But, during this period the petitioner was not reengaged. Hence, there is violation of section 25-H of Industrial Disputes Act, 1947 which says that where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall in such manner as may be prescribed, give an opportunity to the retrenched workmen. In this case, no opportunity was given to the petitioner, instead of that other persons were engaged after 25.10.1998 by the respondents. PW-2, Surinder Kumar has also categorically deposed that no notice was served upon the petitioner to come back to his duties.

14. Hence, in the light of my aforesaid discussion, it stands established that the termination order of petitioner w.e.f. 25.10.1998 are against the provisions of section 25-G and 25-H of Industrial Disputes Act, 1947 and consequently, said order is hereby declared null & void being improper and unjustified.

15. Although, the petitioner had filed an OA no. 2812/1999 challenging his retrenchment orders before State Administrative Tribunal and he was granted relief of re-engagement vide order dated 9.11.2001 but at the same time, it is also not disputed fact that the respondents preferred CWP No. 766/2002 before the Hon'ble High Court which was accepted vide order dated 22.4.2008 and order passed by State Administrative Tribunal dated 9.1.2001 was set aside on the ground of lack of jurisdiction and it was directed that if industrial dispute is raised by the petitioner and a reference is sent to the Labour Court, then, it would be decided accordingly. As the result, this Court received the reference and petitioner filed his claim to set aside his termination orders.

16. For the aforesaid reasons, the petitioner is entitled to be reinstated in service with seniority and continuity w.e.f. 25.10.1998. The petitioner was terminated on 25.10.1998, therefore, since then about fourteen years have elapsed, therefore, it cannot be believed that during this period, petitioner remained without any job or he was not employed gainfully. I am also of the

opinion that reinstatement with back wages should not be a rule. The back wages can be granted only in special cases. Taking into account facts and circumstances of the present case, the petitioner is not entitled to back wages.

17. From the pleadings as well as statements of petitioner and PW-2 Surender Kumar, it is clear that the junior persons to petitioner namely Mangat Ram, Kedar Singh, Darshan Lal, Bhajan Ram, Prakash Chand, another Prakash Chand, Jaswant Singh, Laxmi Dass, Joginder Singh etc. were engaged subsequently and they were given work charge status and regularised by the respondents. So, petitioner has prayed that he be also given work-charge status. On behalf of respondents, reliance was made on the orders of State Administrative Tribunal Ex. R-1 to Ex. R-11 vide which the other junior persons were regularised.

18. I have carefully gone through the aforesaid orders Ex. R-1 to Ex. R-11. All these orders were passed on 19.11.1999 and these orders are revealing that the petitioners (other junior workmen) were re-engaged and respondents undertook not to disengage them except in due process of law. There is nothing in the aforesaid orders of State Administrative Tribunal Ex. R-1 to Ex. R-11 that the other junior persons were given work-charge status. However, from the perusal of the reply filed by the respondents, it is not disputed that the work-charge status was given to the other junior persons who were engaged after the petitioner. The reply filed by the respondent is revealing that the work-charge status was conferred upon those junior workers who fulfilled the criteria as per State Government Policy.

19. So, in view of aforesaid facts, I am of the opinion that the petitioner is only to the work-charge status if he fulfills the criteria of State Government policy. The case of the petitioner would be considered for work-charge status after re-engaging him by the order of this Court w.e.f. 25.10.1998

20. Accordingly, in the light of my aforesaid discussion, it cannot be strictly held that by refusing the work-charge status to the petitioner is improper and unjustified. However, respondent no.2 is directed to consider the case of the petitioner for work-charge status as per the criteria of Government policy. As the result, for the aforesaid reasons issue no.1 is partly decided in affirmative whereas issue no.2 is decided in favour of petitioner.

Issue No.3

21. For the reasons to be recorded hereinabove while discussing issue no.1 and 2, the petitioner is ordered to be reinstated in service w.e.f. 25.10.1998 with seniority and continuity in service. Further, the respondent no.2 is directed to consider the case of petitioner for work-charge status in accordance with law as per the criteria of Government Policy. Hence, this issue is decided in favour of petitioner.

Issue No.4

22. I do not find any evidence on behalf of respondents to show that petitioner is stopped from filing the present claim. Hence, this issue is decided against the respondent.

Issue No.5

23. The present reference was received in the Court in November, 2008 after the decision of the Hon'ble High Court dated 22.4.2008 passed in CWP No. 766/2002 wherein it was directed that if the petitioner would raise an industrial dispute then it would be decided by the Labour court. Accordingly, under these circumstances, the present petition is not time barred. Hence, this issue is decided against the respondents.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the petitioner is ordered to be reinstated in service with seniority and continuity w.e.f. 25.10.1998 but without back wages. Further, respondent no. 2 is directed to consider the case of the petitioner for work-charge status as per the criteria of Government policy and as such the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref No. 57 of 2007.
Instituted on. 4.7.2007.
Decided on 6.9.2012.

M/s Associated Ancillaries Workers Union Shed No. 2 to 4, Sector-II, Parwanoo, Solan,
H.P through its President/General Secretary. ...Petitioner.

Vs.

M/s Associated Ancillaries, Shed No. 1 to 4, Sector-II, Parwanoo, District Solan, H.P
through its Manager. ...Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Advocate.
For respondent : Shri V.K Gupta, AR.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the action of the management of M/s Associated Ancillaries, Shed No. 1 to 4, Sector-II, Parwanoo, District Solan to declare lock-out in their factory w.e.f. 30.4.2007 while the conciliation proceedings were going on before the Labour Inspector-cum Conciliation Officer, Parwanoo, District Solan, HP and next date of conciliation meeting was fixed on 9.5.2007 regarding implementation of new settlement which was likely to be effective w.e.f. June, 2006 (Copy of demand notice dated 29.5.2006 enclosed) without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the affected workmen (list enclosed) are entitled from the above management?”

2. The claim has been filed by the union of twenty four workers of respondent company. It is stated in the claim petition that the respondent company has been doing its work for the last more than 30 years at Parwanoo and the workers of union have been working for the last 11 to 30 years. The petitioner union submitted the demand notice to the respondent management on 27.5.2006, copy of which was also sent to the Labour Inspector-cum-Conciliation Officer, Parwanoo. During the conciliation proceedings on 28.2.2007, on the some of the demands an agreement was arrived at between the parties to increase the shoe allowances from Rs. 600/- to Rs. 700/- per year and it was also agreed that Rs. 800/- per year would be given to each worker as gift. However, during the pendency of the conciliation proceedings, the respondent issued a public notice dated 30.4.2007 to the effect that the factory was closed. After receiving said public notice, the petitioner union submitted representations against the same before Labour Commissioner, Shimla. The respondent put lock on the factory gate and did not allow the workers to go inside. The Conciliation Officer, Parwanoo fixed the next date for conciliation on 9.5.2007. The respondent management filed its reply before Conciliation Officer which was objected to by the petitioner. The respondent factory was illegally closed without any reason whereas there was no financial loss. Since, the conciliation proceedings were pending, therefore, the respondent could not have closed the factory which resulted into the retrenchment of the workers which was against section 33 of Industrial Disputes Act, 1947 as no prior permission was obtained by the respondent from the concerned authority. From 1985 to 2007, the value of the product manufactured by the respondent had been increasing, so, there was no justification to close the respondent factory. Thus, the management was earning profit every year. The petitioner felt aggrieved by the action of the respondent, filed a writ petition before the Hon'ble High Court which was disposed of and consequently, the present reference was received by this Court. Hence, the present claim petition with the prayer to set aside the lock-out orders of the respondent factory dated 30.4.2007 by declaring the same null and void and the workers of petitioner union be allowed to work on the same post as they were working on 30.4.2007 with full back wages.

3. The claim petition was contested by the respondent by filing a reply wherein they took preliminary objections as to locus standi, financial constraints of the respondent management for closer and vague nature of the reference. On merits, the respondent did not dispute that the workers of the petitioner union were working in the factory of respondent. It was also not disputed that earlier a demand notice was pending before Conciliation Officer, Parwanoo wherein a settlement dated 28.2.2007 was arrived at between the parties. However, it was stated that the settlement was not the result of demand notice but it was as the result of mutual consent of both the parties. It was stated that there was no lock-out of the respondent factory but in-fact the factory was closed vide public notice dated 30.4.2007 due to financial constraints and all the workers were offered all the dues and benefits which they refused to receive. The respondent had also sent copy of notice along with cheques consisting of all dues of the workers through registered post which they refused to receive. The closer of respondent factory was not illegal but it was done in accordance with law. At that time, no demand notice was pending, so, there was no application of section 33 of Industrial Disputes Act, 1947. The subsequent conciliation proceedings fixed by Conciliation Officer were illegal. The petitioner could not show how the closer notice was illegal. Consequently, respondent prayed for the dismissal of the petition.

4. Rejoinder was filed by the petitioner union wherein all the preliminary objections taken by the respondent were denied and further the averments already made in the claim petition were reasserted.

5. On the pleadings of the parties, the following issues are framed.

1. Whether the action of the management of respondent to declare lock-out in its factory w.e.f. 30.4.2007 while the conciliation proceedings were going on before the Labour

Inspector cum-Conciliation Officer, Parwanoo without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? OPP...

2. If issue no.1 is proved, to what relief the petitioners are entitled to? OPP...

3. Whether the petitioners have no locus standi to raise any claim and to seek any relief as alleged? OPR...

4. Whether it was closer and not the lock-out of the respondent? If so, its effect? OPR...

5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement with seniority and continuity in service along-with back wages @ 25%.
Issue No.3	No.
Issue No.4	It was intended closer but liable to set aside.
Relief.	Reference answered in negative as the action of the respondent is improper and unjustified per operative part of award.

Reasons for finding

Issue No.1 and 4.

9. Both these issues are interconnected and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I am of the considered opinion that the respondent had intended to close its factory w.e.f. 30.4.2007 by issuing a public notice Ex. PD dated 30.4.2007. For the reasons to be recorded hereinafter, said intended closer of the factory is not justified, consequently, it is hereby declared illegal.

11. There is no dispute that petitioner is the union of twenty four workers working in the factory of respondent. The respondent has intended to close down its factory w.e.f. 30.4.2007 vide public notice Ex. PD. On the other hand, the petitioner union has alleged that the respondent had intended to lock-out its factory w.e.f. 30.4.2007. Section 22(2) of Industrial Disputes Act, 1947 deals with the provisions of lock-outs and it reads as under:

“No employer carrying on any public utility service shall lock-out any of his workmen—

- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings”.

12. Section 2(l) defines lock-outs which means temporary closing of a place of employment, or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.

13. But, from the perusal of the public notice Ex. PD, it is clear that the respondent management did not intend to lock-out the factory but it intended to close the same permanently. As the result, the provisions relating to lock-outs envisaged in Industrial Disputes Act, 1947 are not applicable.

14. Now, we have to see whether the public notice Ex. PD amounts to legal closer of the respondent factory. Section 25-FFA of Industrial Disputes Act, 1947 makes it obligatory upon the employer to serve at least sixty days prior notice on the intended closer stating clearly the reasons for intended closer. Further, it is stated in section 25-FFA that the aforesaid provisions are not applied to an undertaking in which less than fifty workmen are employed. The list of workman attached with the reference is revealing that at the relevant time, twenty four workers were working in the factory of respondent. So, the number of workers is less than fifty, therefore, the aforesaid provisions contained under section 25-FFA of sixty days notice is not applicable to the present case. However, at the same time in case of closer, there is a provision of compensation to the workmen as envisaged under section 25-FFF of Industrial Disputes Act, 1947 which reads as under:

“Compensation to workmen in case of closing down of undertakings.- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months”.

15. From the careful perusal of notice Ex. PD, it stands established that at the time of intended closer, the respondent did not comply with the aforesaid provisions of section 25-FFF. The respondent management was to serve separate notice to each worker in accordance with the provisions of section 25-F which says that no workman shall be retrenched until he has been given one month's notice in writing indicating he reasons for retrenchment or the workman has been paid in lieu of such notice, wages for the period of notice. This provision is applicable to a workman who has been in continuous service for not less than one year under the employer. In our case, there is no dispute that all the workers of petitioner union have completed continuous service of one year prior to the notice Ex. PD dated 30.4.2007. Since, no notice under section 25-F was served upon each of the worker, therefore, the retrenchment of workers is illegal and the public notice Ex. PD dated 30.4.2007 is also declared null and void and by virtue of same the respondent factory cannot be said to have been closed in accordance with law.

16. On behalf of petitioner Juggi Lal (one of the worker of petitioner union) stepped into the witness box as PW-1 and has deposed all the facts stated in claim petition. He has stated that conciliation proceedings were pending before Labour Inspector-cum-Conciliation Officer Parwanoo wherein conciliation was arrived at partly vide Ex. PH and consequently incentives Ex. PJ were given to the workers. His testimony is revealing that earlier the petitioner union has filed a writ petitioner before the Hon'ble High Court which was disposed of vide order Ex. PO dated 30.5.2008 wherein Hon'ble High Court had given liberty to the workers of petitioner union to agitate the matter before this Court.

17. Petitioner also examined one other witness Smt. Hem Lata from the office of Labour Commissioner, Shimla, who proved the documents Ex. PK-1 to Ex. PK- 7 which are the applications filed by the respondent to the Labour Commissioner for the renewal of factory licence for the year 1985, 1990, 1995, 2000, 2005, 2006 and 2007. She has further stated that no application was received from the respondent to close down the concern/factory. PW-3, Shyam Sunder is the another witness of the petitioner who is President of the petitioner union and he has deposed that a demand notice was served upon the respondent. He has further stated that a compromise was arrived at between the parties regarding some of the demands. But his testimony is nowhere revealing that the entire dispute was amicably settled before the Conciliation Officer.

18. The careful scrutiny of statement of RW-1 Shri M.P Chawla the witness of respondent is revealing that vide notice Ex. PD dated 30.4.2007, the factory was closed and the management tendered all the dues and benefits to the workers which they refused to receive. He tendered in evidence the sealed envelopes (twenty four in number) annexure RM-1/1 to RM-1/24.

19. As discussed hereinabove, it was mandatory upon the respondent to serve one month's notice or wages of one month in lieu of the notice prior to the closer. The testimony of RW-1 is revealing that the factory was closed on 30.4.2007 and on the same day the due and benefits were sent to the workers through registered post i.e on 30.4.2007 itself, but as per section 25-FFF the notice was to be served upon the workman before the closer and not at the time of closer or after the closer. As such, the compliance of section 25-FFF is not proved.

20. RW-1 Shri M.P Chawla has tendered into evidence all the relevant documents Ex. R-1/A to Ex. R-1/C, Ex. PD, Ex. R-2/A to Ex. R-2/G, Ex. RH, Ex. RA to Ex. RL and the aforementioned envelopes Ex. RM-1/1 to Ex. RM-1/24. All these documents would not justify the closer of the respondent factory.

21. The cross-examination of Shri M.P Chawla is relevant wherein he has stated that the shed of the respondent has been allotted to Anchemco (the other concern). At the same time he has deposed that he did not bring any record about the surrender of shed by the respondent to the state government and its further allotment to M/s Anchemco. He has further admitted that the electricity bills Ex. PX-1 to Ex. PX-6 are the copies dated 26.4.2010, 25.5.2010, 27.7.2010, 28.7.2010 and 27.9.2010 which have been issued in the name of respondent company. That means respondent factory is still running even after the date of issuance of public notice Ex. PD dated 30.4.2007. This witness has also stated that the respondent unit has been working since 1979 and he has further admitted that the production is going on in the aforesaid shed. He has also admitted that the company has applied for the renewal of licence vide applications Ex. PK-1 to Ex. PK-7. In his cross-examination, this witness has further admitted that the respondent company is a profitable unit.

22. Thus, taking into account the entire testimony of RW-1, it is clear that the respondent company is not closed but it is still running and doing profitable business, so, there is no question of closer as alleged by the respondent. To my mind, vide notice Ex. PD dated 30.4.2007, the respondent had intended to get-rid-off the workers of petitioner union and this action of respondent is not justified.

23. It has also come in evidence that the conciliation proceedings were going on before Conciliation Officer, Parwanoo when notice Ex. PD was issued on 30.4.2007. RW-1 Shri M.P Chawla has admitted that the next date of conciliation was fixed for 9.5.2007. If, upon the demand notice of the petitioner, conciliation proceedings were pending, therefore, the respondent could not have retrenched the workmen and could not have closed the factory without the prior permission/approval of the concerned authority under section 33 of Industrial Disputes Act, 1947 which reads as under:

“Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.— (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2*[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

24. Consequently, in the light of my aforesaid discussion, the notice Ex. PD dated 30.4.2007 is hereby declared null and void being against the provisions of Industrial Disputes Act, 1947, hence, the closer of the factory by the respondent is not justified. Although, the petitioner union has termed it as a lock-out but the terminology of “lock-out or closer” would not make any difference as far as the right of the workmen of petitioner union is concerned. The workmen of petitioner union cannot be thrown out from the service by the respondent on the pretext of notice Ex. PD which has been declared null & void. Hence, issue no.1 is decided in favour of the petitioner and issue no.4 is decided accordingly.

Issue no.2

25. For the reasons to be recorded hereinabove while discussing aforesaid issues, the notice Ex. PD dated 30.4.2007 has been declared null & void. Consequently, the workmen of the petitioner union cannot be thrown out or retrenched by the respondent company and they are entitled to be reinstated in service with immediate effect. It has come in evidence that some of the workers have arrived at settlement with the respondent management under section 18 of Industrial Disputes Act, 1947, so, the workers who have finally settled with the respondent under section 18 of Industrial Disputes Act are not entitled to any relief and as such they are not entitled to be reinstated or to get any other relief from the respondent. However, the remaining workers of petitioner union are entitled to be reinstated in service with immediate effect with continuity and seniority along-with back wages @ 25%. Hence, this issue is answered in favour of petitioner union.

Issue no.3

26. The petitioner union has got locus-standi to file the present claim petition and to seek the relief on behalf of the workmen as it is the union of the workmen and the claim petition has been filed through its President/General Secretary. Consequently, this issue is decided against the respondent.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and the reference is answered accordingly and as such the notice Ex. PD dated 30.4.2007 has been declared null & void. Consequently, the workmen of the petitioner union cannot be thrown out or retrenched by the respondent company and they are entitled to be reinstated in service with immediate effect. It has come in evidence that some of the workers have arrived at settlement with the respondent management under section 18 of Industrial Disputes Act, 1947, so, the workers who have finally settled with the respondent under section 18 of Industrial Disputes Act are not entitled to any relief and as such they are not entitled to be reinstated or to get any other relief from the respondent. However, the remaining workers of petitioner union are entitled to be reinstated in service with immediate effect with continuity and seniority along-with back wages @ 25%. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of September, 2012 in the presence of parties counsel.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 18th October, 2012

No. HHC/GAZ/14-217/95-1.—Hon'ble the Chief Justice has been pleased to grant six days' earned leave *w.e.f.* 29.10.2012 to 3.11.2012 with permission to prefix Dussehra holidays and Sunday falling from 21.10.2012 to 28.10.2012 and to suffix Sunday falling on 4.11.2012 in favour of Shri Rakesh Kumar Chaudhary, Presiding Officer, Fast Track Court, Shimla, H.P.

Certified that Shri Rakesh Kumar Chaudhary is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Rakesh Kumar Chaudhary would have continued to hold the same post of Presiding Officer, Fast Track Court, Shimla, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001**NOTIFICATION***Shimla, the 18th October, 2012*

No. HHC/GAZ/14-315/2010.—Hon'ble the Chief Justice has been pleased to grant *ex-post facto* sanction of two days' commuted leave for 29.9.2012 and 30.9.2012 in favour of Shri Nikhil Aggarwal, Civil Judge (Junior Division)-cum-JMIC (VII), Shimla H.P.

Certified that Shri Nikhil Aggarwal has joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri Nikhil Aggarwal would have continued to hold the post of Civil Judge (Junior Division)-cum-JMIC (VII), Shimla but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001**NOTIFICATION***Shimla, the 17th October, 2012*

No. HHC/GAZ/14-258/03.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2(32) of Chapter 1 of H.P. Financial Rules, 2009, has been pleased to declare the Civil Judge (Sr. Division)-cum-CJM, Shimla as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Sr. Division)-cum-JMIC (I), Shimla and also the Controlling Officer for the purpose of T.A. etc. in respect of the establishments attached to the aforesaid Court under head "2014-Administration of Justice" during the leave period of Shri Avinash Chander, Civil Judge (Sr. Division)-cum-JMIC(I), Shimla *w.e.f.* 29.10.2012 to 9.11.2012 with permission to prefix Sunday and Dussehra holidays falling on 21.10.2012 to 28.10.2012 and suffix Second Saturday, Sunday and Gazetted and local holiday falling *w.e.f.* 10.11.2012 to 14.11.2012 or till he returns from leave.

By order,
Sd/-
Registrar General.

चिकित्सा शिक्षा एवं अनुसंधान विभाग**अधिसूचना**

शिमला-171002, 15 अक्टूबर, 2012

संख्या: एच.एफ.डब्ल्यू-बी(बी)1-9/2012.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश चिकित्सा शिक्षा एवं अनुसंधान विभाग के अधीन इन्दिरा गांधी चिकित्सा महाविद्यालय, शिमला में रेडियोलोजी स्पेशियेलिटी में रेडिएशन सेफटी ऑफिसर (रेडियो-डाइग्नोसिस), वर्ग-I (राजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध "क" के अनुसार भर्ती और प्रोन्नति नियम बनाती हैं, अर्थात् :—

1. **संक्षिप्त नाम और प्रारम्भ.**—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश चिकित्सा शिक्षा एवं अनुसंधान विभाग के अधीन इन्दिरा गांधी चिकित्सा महाविद्यालय, शिमला रेडियोलोजी स्पेशियेलिटी रेडिएशन सेफ्टी ऑफिसर (रेडियो-डाइग्नोसिस), वर्ग-I (राजपत्रित) भर्ती और प्रोन्नति नियम, 2012 है ।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव (स्वास्थ्य)।

उपाबन्ध—“क”

हिमाचल प्रदेश चिकित्सा शिक्षा एवं अनुसंधान विभाग के अधीन इन्दिरा गांधी चिकित्सा महाविद्यालय के रेडियोलोजी विभाग में रेडिएशन स्पेशियेलिटी में रेडियेशन सेफ्टी ऑफिसर (रेडियो-डाइग्नोसिस), वर्ग-I (राजपत्रित) के पद के लिए भर्ती और प्रोन्नति नियम

1. **पद का नाम.**—रेडिएशन सेफ्टी ऑफिसर (रेडियो-डाइग्नोसिस)
2. **पदों की संख्या.**—1(एक)
3. **वर्गीकरण.**—वर्ग-I(राजपत्रित)
4. **वेतनमान.**— (i) नियमित पदधारियों के लिए वेतनमान: पे बैंड 10,300—34800 रुपए जमा 5400 रुपए ग्रेड पे ।

(ii) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियाँ : स्तम्भ संख्या 15—क में दिए गए ब्योरे के अनुसार 15,700/— रुपए प्रतिमास।

5. **चयन पद अथवा अचयन पद.**—चयन 1

6. **सीधी भर्ती के लिए आयु.**—45 वर्ष और इससे कम :

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित, पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी, इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा ;

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जनजातियों तथा अन्य प्रवर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश(आदेशों) के अधीन अनुज्ञेय है :

परन्तु यह और भी कि पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सेक्टर, निगमों/स्वायत्त निकायों में आमलेन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत, पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को नहीं दी जाएगी, जो पश्चात्पूर्वी ऐसे पब्लिक सेक्टर, निगमों तथा स्वायत्त निकायों के द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सेक्टर, निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे ।

(1) सीधी भर्ती के लिए आयु सीमा की गणना, उस वर्ष के प्रथम दिवस से की जाएगी, जिसमें पद (पदों) को आवेदन आमन्त्रित करने के लिए, यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है ।

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव, हिमाचल प्रदेश लोक सेवा आयोग के विवेकानुसार शिथिल किया जा सकेगा ।

7. सीधे भर्ती किए जाने वाले व्यक्ति(व्यक्तियों) के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—(क) अनिवार्य अर्हता(एं) :

- (i) किसी मान्यता प्राप्त विश्वविद्यालय या केन्द्रीय/हिमाचल प्रदेश द्वारा सभ्यक् रूप से मान्यता प्राप्त और एटोमिक एनर्जी रेगुलेटरी बोर्ड, मुम्बई, द्वारा अनुमोदित किसी संस्थान से रेडिएशन टैक्नोलोजी या रेडियोलोजी एवं इमेजिंगमें स्नातकोत्तर की उपाधि ।
- (ii) रेडियोलोजीकल फिजिक्स एण्ड एडवाइजरी डिविजन (आर0 पी0 एण्ड ए0डी0) भावा एटोमिक रिसर्च सेन्टर (बी0ए0आर0सी0), मुम्बई, रेडियेशन सेफटी आफिसर सर्टीफिकेट/एकेडिटेशन ।

(ख) वांछनीय अर्हता (एं) :

हिमाचल प्रदेश की रूढियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता ।

8. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के विहित आयु और शैक्षिक अर्हताएं, प्रोन्नत व्यक्ति (व्यक्तियों) की दशा में लागू होगी या नहीं.—आयु: लागू नहीं ।

शैक्षिक अर्हता : हां जैसा उपरोक्त स्तम्भ संख्या-7 (क) में यथा विहित है ।

9. परीक्षा की अवधि, यदि कोई हो.—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दे ।

10. भर्ती की पद्धति : भर्ती सीधी होगी या प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पद(पदों) की प्रतिशतता.—शतप्रतिशत प्रोन्नति द्वारा, ऐसा न होने पर, सीधी भर्ती द्वारा, यथास्थिति, नियमित आधार पर या संविदा के आधार पर भर्ती द्वारा ।

11. प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण की दशा में वे श्रेणियाँ (ग्रेड), जिनसे प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण किया जाएगा.—उपरोक्त स्तम्भ संख्या 7 (क) में सीधी भर्ती के लिए विहित शैक्षिक अर्हता धारण करने के अध्यक्षीन वरिष्ठ रेडियोग्राफरज में से प्रोन्नति द्वारा जिनका पाँच वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके पाँच वर्ष का नियमित सेवाकाल हो, ऐसा न होने पर वरिष्ठ रेडियोग्राफरज में से प्रोन्नति द्वारा जिनके पास उपरोक्त स्तम्भ संख्या 7(क) में सीधी भर्ती के लिए विहित शैक्षिक अर्हता के अध्यक्षीन जिनका वरिष्ठ रेडियो ग्राफर और रेडियोग्राफर के रूप में सयुक्तता: दस वर्ष का नियमित सेवाकाल या की गई लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके दस वर्ष का नियमित सेवाकाल हो, दोनों के न होने पर उपरोक्त स्तम्भ संख्या 7 (क) में सीधी भर्ती के लिए विहित शैक्षिक अर्हता धारण करने के अध्यक्षीन रेडियोग्राफरज में से प्रोन्नति द्वारा जिनका दस वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके दस वर्ष का नियमित सेवाकाल हो :

परन्तु प्रोन्नति के प्रयोजन के लिए प्रत्येक कर्मचारी को, जनजातीय/दुर्गम क्षेत्रों में ऐसे क्षेत्रों में पदों की पर्याप्त संख्या की उपजलब्धता के अध्यक्षीन कम से कम एक कार्यकाल तक सेवा करनी होगी:

परन्तु यह और कि उपर्युक्त परन्तुक (1) उन कर्मचारियों के मामले में लागू नहीं होगा, जिनकी अधिवर्षिता के लिए पाँच वर्ष या उससे कम की सेवा रही हो :

परन्तु यह और भी कि उन अधिकारियों/कर्मचारियों को, जिन्होंने जनजातीय/दुर्गम क्षेत्र में कम से कम एक कार्यकाल तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काडर) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरित किया जाएगा ।

स्पष्टीकरण-I :—उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्रों में “कार्यकाल” से, साधारणतः तीन वर्ष की अवधि या प्रशासनिक अपेक्षाओं और कर्मचारी द्वारा किए गए कार्य को ध्यान में रखते हुए, ऐसे क्षेत्रों में तैनाती की इससे कम अवधि अभिप्रेत होगी ।

स्पष्टीकरण-II.—उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्र निम्न प्रकार से होंगे:—

1. जिला लाहौल एवं स्पिति ।
2. चम्बा जिला का पांगी और भरमौर उप मण्डल ।
3. रोहडू उप मण्डल का डोडरा-क्वार क्षेत्र ।
4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगना, मुनीष, दरकाली और ग्राम पंचायत काशापाट ।
5. कुल्लु जिला का पन्द्रह बीस परगना ।
6. कांगड़ा जिला के बैजनाथ उप मण्डल का बडा भंगाल क्षेत्र ।
7. जिला किन्नौर ।
8. सिरमौर जिला में उप तहसील कमरऊ के काठवाड और कोरगा पटवार वृत्त, रेणुकाजी तहसील के भलाड-भलौना तथा सांगना पटवार वृत्त और शिलाई तहसील का कोटा पाब पटवार वृत्त ।
9. मण्डी जिला में करसागे तहसील का खन्योल-बगडा पटवार वृत्त, बालीचौकी उप तहसील के गाडा गोसाई मठयानी, घनयाड, थाची, बागीष सेमगढ और खोलनाल, पद्धर तहसील के झारवाड, कुटगढ, ग्रामन देवगढ, ट्रैला, रोपा, कथोग, सिल्ह-भडवानी, हस्तपुर, घमरेड और भटेड पटवार वृत्त, थुनाग तहसील के चियूणी, कालीपार, मानगढ, थाच-बगडा, उत्तरी मगरू और दक्षिणी मगरू पटवार वृत्त और सुन्दरनगर तहसील का बटवाडा पटवार वृत्त ।

(1) प्रोन्नति के सभी मामलों में पद पर नियमित नियुक्ति से पूर्व सम्भरक (पोषक) पद में की गई लगातार तदर्थ सेवा, यदि कोई हो, प्रोन्नति के लिए इन नियमों में यथाविहित सेवाकाल के लिए, इस शर्त के अधीन रहते हुए गणना में ली जाएगी, कि सम्भरक प्रवर्ग में तदर्थ यदि नियुक्ति/प्रोन्नति, भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात् की गई थी :

परन्तु उन सभी मामलों में जिनमें कोई कनिष्ठ व्यक्ति सम्भरक (पोषक)पद में अपने कुल सेवा काल (तदर्थ आधार पर की गई सेवा सहित, जो नियमित सेवा/नियुक्ति अनुसरण में हो) के आधार पर उपर्युक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहाँ अपने अपने प्रवर्ग/पद/काडर में उससे वरिष्ठ सभी व्यक्ति विचार किए जाने के पात्र समझे जाएंगे और विचार करते समय कनिष्ठ व्यक्तियों से ऊपर समझे जाएंगे/रखे जाएंगे ।

परन्तु यह और कि उन सभी पदाधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, कम से कम तीन वर्ष की न्यूनतम अर्हता सेवा या पद के भर्ती एवं प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगी :

परन्तु यह और भी कि जहां कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किए जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहां उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के लिए अपात्र समझा जाएगा/समझे जाएंगे ।

स्पष्टीकरण:—अन्तिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जाएगा यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सैनिक है, जिसे डिमोबिलाईज्ड आर्मड फोर्सिस परसोनल (रिजर्वेशन आफ वेकैन्सीज इन दी हिमाचल स्टेट नान-टैक्नीकल सर्विसीज) रुल्ज, 1972 के नियम 3 के उपबन्धों के अन्तर्गत भर्ती किया गया है और इनके अन्तर्गत वरीयता लाभ दिए गए हों या जिसे एक्स-सर्विसमैन (रिजर्वेशन आफ वेकैन्सीज इन दी हिमाचल प्रदेश टैक्नीकल सर्विसीज) रुल्ज, 1985 के नियम 3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और इनके अन्तर्गत वरीयता लाभ दिए गए हों ।

(2) इसी प्रकार स्थाईकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति से पूर्व सम्भरक पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिये गणना में ली जाएगी, यदि तदर्थ नियुक्ति/प्रोन्नति, उचित चयन के पश्चात् और भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थी :

परन्तु की गई उपर्युक्त निर्दिष्ट तदर्थ सेवा को गणना में लेने के पश्चात् जो स्थायीकरण होगा, उसके फलस्वरूप पारस्परिक वरीयता अपरिवर्तित रहेगी ।

12. यदि विभागीय प्रोन्नति समिति विद्यमान है, तो उसकी संरचना:—विभागीय प्रोन्नति समिति की अध्यक्षता हिमाचल प्रदेश लोक सेवा आयोग के अध्यक्ष या उसके द्वारा नामनिर्दिष्ट आयोग के सदस्य द्वारा की जाएगी ।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा:—जैसा विधि द्वारा अपेक्षित हो ।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा:—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है ।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन:—सीधी भर्ती के मामले में, पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा । यदि यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम, इत्यादि, यथास्थिति, आयोग/अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा ।

15-क. संविदा नियुक्ति द्वारा पद पर नियुक्ति के लिए चयन:—इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियां, नीचे दिए गए निबन्धनों और शर्तों के अध्वधीन की जाएंगी:—

(I) संकल्पना:—(क) इस पॉलिसी के अधीन चिकित्सा शिक्षा एवं अनुसंधान विभाग, इन्दिरा गांधी मेडिकल कॉलेज के रेडियोलॉजी विभाग में रेडिएशन सेफटी ऑफिसर (रेडियो डॉइगनोसिस) वर्ग—I (राजपत्रित) के पद को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा :

परन्तु संविदा अवधि में वर्षानुवर्ष आधार पर **विस्तारण/नवीकरण** के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाणपत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण, उस वर्ष के दौरान संतोषजनक रहा है, और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी ।

(ख) पद का हिमाचल प्रदेश लोक सेवा आयोग के कार्यक्षेत्र में आना:

प्रधान सचिव/सचिव (स्वास्थ्य), हिमाचल प्रदेश सरकार रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात्, अध्यपेक्षा को सम्बद्ध भर्ती अभिकरण, अर्थात् हिमाचल प्रदेश लोक सेवा आयोग के समक्ष रखेगा ।

(ग) चयन, इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा ।

(II) संविदात्मक उपलब्धियां.—संविदा के आधार पर नियुक्त रेडिएशन सेफटी ऑफिसर (रेडियो डॉइगनोसिस) को 15,700/— रुपए की समेकित नियत संविदात्मक रकम (जो पे बैंड का न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी । यदि संविदा में एक वर्ष से अधिक की बढ़ौतरी की जाती है तो पश्चात्तवर्ती वर्ष(वर्षों) के लिए संविदात्मक उपलब्धियों में 471/रुपए की रकम (पद के पे बैंड का न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

(III) नियुक्ति/अनुशासन प्राधिकारी.—प्रधान सचिव/सचिव (स्वास्थ्य) हिमाचल प्रदेश सरकार नियुक्ति और अनुशासन प्राधिकारी होगा ।

(IV) चयन प्रक्रिया.—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए, तो लिखित परीक्षा या व्यावहारिक परीक्षा द्वारा किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि सम्बद्ध भर्ती अभिकरण, अर्थात् हिमाचल प्रदेश लोक सेवा आयोग द्वारा अवधारित किया जाएगा ।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति.—जैसी सम्बद्ध भर्ती प्राधिकरण, अर्थात् हिमाचल प्रदेश लोक सेवा आयोग द्वारा समय-समय पर गठित की जाए ।

(VI) करार.—अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध—“ख” के अनुसार करार हस्ताक्षरित करना होगा ।

(VII) निबन्धन और शर्तें.—(क) संविदा पर नियुक्त व्यक्ति को 15,700/—रुपए की नियत संविदात्मक रकम (जो पे बैंड का न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्ष (वर्षों) के लिए संविदात्मक रकम में 471/— रुपए (पद के पे बैंड का न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं, जैसे वरिष्ठ/चयन वेतनमान इत्यादि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी ।

यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदा पर नियुक्त व्यक्ति, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । तथापि संविदा पर नियुक्त कर्मचारी बारह सप्ताह के प्रसूति अवकाश और दस दिन के चिकित्सा अवकाश के लिए भी हकदार होगा/होगी । वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए हकदार नहीं होगा/होगी । संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय किसी अन्य प्रकार का कोई अवकाश अनुज्ञात नहीं होगा :

परन्तु अनुपभुक्त आकस्मिक अवकाश और चिकित्सा अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रनीत नहीं किया जाएगा ।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना कर्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान(समापन) हो जाएगा । संविदा पर नियुक्त व्यक्ति, कर्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा ।

(ङ) संविदा पर नियुक्त कर्मचारी जिसने तैनाती के एक स्थान पर पांच साल का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो ।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्यता प्रमाण—पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक की गर्भवती महिला, प्रसव होने तक, अस्थायी तौर पर अनुपयुक्त बनी रहेगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

(छ) संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध, जैसे एफ.आर.—एस.आर., छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों वेतन आदि के लिए हकदार होंगे।

16. आरक्षण.—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा, समय—समय पर अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बावत जारी किए गए अनुदेशों के अधीन होगी।

17. विभागीय परीक्षा.—सेवा के प्रत्येक सदस्य को समय—समय पर यथा संशोधित हिमाचल प्रदेश विभागीय परीक्षा नियम, 1997 में यथाविहित विभागीय परीक्षा पास करनी होगी।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां यह कारणों को लिखित में अभिलिखित करके, और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किसी (किन्हीं) (उपबन्ध)उपबन्धों को किसी वर्ग या व्यक्ति (व्यक्तियों) के प्रवर्ग या पद (पदों) की बाबत, शिथिल कर सकेगी।

उपाबन्ध—“ख”

रेडिएशन सेफ्टी ऑफिसर (रेडियो डॉइगनोसिस) और हिमाचल प्रदेश सरकार के मध्य प्रधान सचिव (स्वास्थ्य), हिमाचल प्रदेश सरकार के माध्यम से निष्पादित की जाने वाली संविदा/करार का प्ररूप

यह करार श्री/श्रीमति -----पुत्र/पुत्री -----निवासी -----, संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात्, “**प्रथम पक्षकार**” कहा गया है), और हिमाचल प्रदेश की राज्यपाल के मध्य----- (नियुक्ति प्राधिकारी का पदनाम)----- (जिसे इसमें इसके पश्चात् “**द्वितीय पक्षकार**” कहा गया है) के माध्यम से आज तारीख ----- को किया गया।

“**द्वितीय पक्षकार**” ने उपरोक्त प्रथम पक्षकार को लगाया गया है और प्रथम पक्षकार ने ----- (पद का नाम) के रूप में संविदा के आधार पर निम्नलिखित निबन्धनों और शर्तों पर सेवा करने के लिए सहमति दी है :—

1. यह कि प्रथम पक्षकार ----- (पद का नाम) ----- के रूप में ----- से प्रारम्भ होने और-----को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस को, अर्थात् -----दिन को स्वयंमेव ही पर्यवसित (समाप्त) हो जाएगी तथा सूचना नोटिस आवश्यक नहीं होगा :

परन्तु संविदा की अवधि में वर्षानुवर्ष आधार पर **विस्तारण/नवीकरण** के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण-पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण, उस वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी ।

2. प्रथम पक्षकार की संविदात्मक रकम 15,700/—रुपए प्रतिमास होगी ।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थायी आधार पर होगी । यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है, तो नियुक्ति पर्यवसित (समाप्त) किए जाने के लिए दायी होगी ।
4. संविदा पर नियुक्त व्यक्ति, एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । तथापि संविदा पर नियुक्त कर्मचारी बारह सप्ताह के प्रसूति अवकाश और दस दिन के चिकित्सा अवकाश के लिए भी हकदार होगा/होगी । वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए हकदार नहीं होगा/होगी । संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय किसी अन्य प्रकार का कोई अवकाश अनुज्ञात नहीं होगा:

परन्तु अनुपभुक्त आकास्मिक अवकाश और चिकित्सा अवकाश, एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रणीत नहीं किया जाएगा ।

5. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्त्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान(समापन) हो जाएगा । संविदा पर नियुक्त ----- (पद का नाम) कर्त्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए वेतन का हकदार नहीं होगा ।
6. संविदा पर नियुक्त व्यक्ति, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो ।
7. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्यता प्रमाण-पत्र प्रस्तुत करना होगा । महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक उसे अस्थायी तौर पर अनुपयुक्त बना देगी । महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए ।
8. संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी ।
9. संविदा पर नियुक्त व्यक्ति(यों) को, कर्मचारी सामूहिक बीमा योजना के साथ-साथ ई0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा ।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं ।

साक्षियों की उपस्थिति में :

1. _____

 (नाम व पूरा पता)

2. _____

 (नाम व पूरा पता)

(प्रथम पक्षकार के हस्ताक्षर)

साक्षियों की उपस्थिति में:—

1. _____

 (नाम व पूरा पता)

2. _____

 (नाम व पूरा पता)

(द्वितीय पक्षकार के हस्ताक्षर)

[AUTHORITATIVE ENGLISH TEXT OF THIS DEPARTMENT NOTIFICATION NO. HFWB(B)1-9-2012 DATED 15-10-2012 AS REQUIRED UNDER CLAUSE (3) OF ARTICLE 348 OF THE CONSTITUTION OF INDIA].

MEDICAL EDUCATION AND RESEARCH DEPARTMENT

NOTIFICATION

Shimla-2, the 15 th October, 2012

No. HFW-B (B) 1-9/2012.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the Recruitment & Promotion Rules for the post of Radiation Safety Officer, (Radio Diagnosis) Class-I (Gazetted) in the Speciality of Radiology, Indira Gandhi Medical College, Shimla under the Department of Medical Education & Research, Himachal Pradesh as per Annexure-A attached to this notification, namely:-

1. Short title and Commencement.—(1) These Rules may be called the Himachal Pradesh, Department of Medical Education & Research, Indira Gandhi Medical College, Shimla, in the speciality of Radiology, Radiation Safety Officer (Radio-Diagnosis), Class-I (Gazetted), Recruitment and Promotion Rules, 2012.

(2) These Rules shall come into force from the date of publication in the e-Rajpatra, Himachal Pradesh.

By order,
 Sd/-
Principal Secretary (Health).

RECRUITMENT AND PROMOTION RULES FOR THE POST OF RADIATION SAFETY OFFICER (RADIO DIAGNOSIS) (GAZETTED) CLASS-I, IN THE SPECIALITY OF RADIOLOGY, DEPARTMENT OF INDIRA GANDHI MEDICAL COLLEGE, SHIMLA UNDER DEPARTMENT OF MEDICAL EDUCATION AND RESEARCH, HP.

1. **Name of post.**—Radiation Safety Officer (Radio Diagnosis).

2. **Number of post(s).**—01 (One).

3. **Classification.**—Class-I (Gazetted).

4. **Scale of Pay.**— (i) Pay scale for regular incumbents:
Pay Band ₹ 10300-34800 + 5400/- Grade Pay

(ii) Emoluments for contract employees ₹ 15,700/- as per details given in Column 15-A.

5. **Whether “Selection” post or “Non-Selection” post.**—Selection.

6. **Age for direct recruitment.**—45 years and below.

Provided that upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on adhoc or on contract basis;

Provided further that if a candidate appointed on adhoc basis or on contract basis had become over-age on the date he/she was appointed as such he/she shall not be eligible for any relaxation in the prescribed age-limit by virtue of his/her such adhoc or contract appointment;

Provided further that upper age-limit is relaxable for Scheduled Castes/Scheduled Tribes/ Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government;

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government servants before absorption in Public Sector Corporations/Autonomous Bodies at the time of initial constitutions of such Corporations/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations /Autonomous Bodies and who are/were finally absorbed in the service of such Corporations /Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

(1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting application or notified to the Employment Exchanges or as the case may be.

(2) Age and experience in the case of direct recruitment, relaxable at the discretion of the Himachal Pradesh Public Service Commission in case the candidate is otherwise well qualified.

7. **Minimum educational and other qualifications required for direct recruit(s).**—

(a) *Essential Qualification(s)*: (i) Master’s Degree in Radiation Technology or Radiology and

Imaging from a recognized University or an Institution duly recognized by the Central / H.P. Government and approved by the Atomic Energy Regulatory Board, Mumbai.

(ii) Radiation Safety Officer Certificate/Accreditation from Radiological Physics and Advisory Division (RP and AD), Bhaba Atomic Research Centre (BARC), Mumbai.

(b) *Desirable Qualification(s)*: Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification(s) prescribed for direct recruit(s) will apply in the case of the promotee(s).—*Age*: Not applicable. *Educational Qualification*: Yes, as prescribed in Column No.7 (a) above.

9. Period of probation, if any.—Two years' subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method(s) of recruitment, whether by direct recruitment or by promotion, deputation, transfer and the percentage of post(s) to be filled in by various methods.—100% by promotion failing which direct recruitment on a 'regular' basis or by recruitment on contract basis, as the case may be.

11. In case of recruitment by promotion, deputation, transfer, grade from which promotion/deputation/transfer is to be made.—By promotion from amongst the Senior Radiographers subject to possessing of educational qualification prescribed for direct recruitment against Column No.7 (a) above with five years regular service or regular combined with continuous adhoc service, if any, in the grade failing which by promotion from amongst the Senior Radiographers subject to possessing of educational qualification prescribed for direct recruitment against Column No.7 (a) above with ten years regular service or regular combined with continuous adhoc service, if any, as Senior Radiographer and Radiographer combined failing both by promotion from amongst the Radiographers subject to possessing of educational qualification prescribed for direct recruitment against Column No.7 (a) above with ten years regular service or regular combined with continuous adhoc service, if any, in the grade.

(I) Provided that for the purpose of promotion every employee shall have to serve at least one term in the Tribal / Difficult areas subject to adequate number of post(s) available in such areas;

Provided further that the proviso (I) supra shall not be applicable in the case of those employees who have five years or less service, left for superannuation.

Provided further that Officers /Officials who have not served atleast one tenure in Tribal/ Difficult area shall be transferred to such area strictly in accordance with his/her seniority in the respective cadre.

Explanation-I.—For the purpose of proviso I supra the "term" in Tribal/Difficult areas" shall mean normally three years or less period of posting in such areas keeping in view the administrative requirements and performance of the employee.

Explanation-II.—For the purpose of proviso I supra the Tribal / Difficult Areas shall be as under: -

1. District Lahaul & Spiti.
2. Pangi and Bharmour Sub Division of Chamba District.
3. Dodra Kwar Area of Rohru Sub-Division.
4. Pandrah Bis Pargana, Munish Darkali and Gram Panchayat Kashapat, Gram Panchayats of Rampur Teshil of District Shimla.
5. Pandrah Bis Pargana of Kullu District.
6. Bara Bhagal Areas of Baijnath Sub Division of Kangra District.
7. District Kinnaur.
8. Kathwar and Korga Patwar Circles of Kamrau Sub Tehsil, Bhaladh Bhalona and Sangna Patwar Circles of Renukaji Tehsil and Kota Pab Patwar Circle of Shillai Tehsil, in Sirmaur District.
9. Khanyol-Bagra Patwar Circle of Karsog Tehsil, Gada-Gussaini, Mathyani, Ghanyar, Thachi, Baggi, Somgad and Kholanal of Bali-Chowki Sub Tehsil, Jharwar, Kutgarh, Graman, Devgarh, Trailla, Ropa, Kathog, Silh-Badhwani, Hastpur, Ghamrehar and Bhatehar Patwar Circle of Padhar Tehsil, Chiuni, Kalipar, Mangarh, Thach-Bagra, North Magru and South Magru Patwar Circles of Thunag Tehsil and Batwara Patwar Circle of Sunder Nagar Tehsil in Mandi District.

(1) In all cases of promotion, the continuous adhoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these Rules for promotion subject to the condition that the adhoc appointment/promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provisions of R&P Rules;

Provided that in all cases where a junior person becomes eligible for consideration by virtue of his/her total length of service (including the service rendered on adhoc basis, followed by regular service/appointment) in the feeder post in view of the provision referred to above, all persons senior to him /her in the respective category / post /cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration;

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years' or that prescribed in the R&P Rules for the post, whichever is less;

Provided further that where a person becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the person(s) junior to him/her shall also be deemed to be ineligible for consideration for such promotion;

Explanation.—The last proviso shall not render the junior incumbent(s) ineligible for consideration for promotion if the senior ineligible person(s) happened to be Ex-Servicemen recruited under the provisions of Rule-3 of the Demobilized Armed Forces Personnel (Reservation of vacancies in Himachal State Non-Technical Service) Rules, 1972 and having been given the benefit of seniority there-under or recruited under the provisions of Rule-3 of the Ex-Serviceman (Reservation of vacancies in the Himachal Pradesh Technical Services) Rules, 1985 and having been given the benefit of seniority there-under.

(2) Similarly, in all cases of confirmation, adhoc service rendered on the feeder post, if any, prior to the regular appointment/promotion against such post shall be taken into account towards the length of service, if the adhoc appointment/promotion had been made after proper selection and in accordance with the provision of the R&P Rules.

Provided that inter-se-seniority as a result of confirmation after taking into account, adhoc service rendered as referred to above shall remain unchanged.

12. If a Departmental Promotion Committee exists, what is its composition?—D.P.C. to be presided over by the Chairman, H.P. Public Service Commission or a Member thereof to be nominated by him.

13 Circumstances under which the H.P.P.S.C. is to be consulted in making recruitment.—As required under the Law.

14. Essential requirement for a direct recruitment.—A candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test if the Himachal Pradesh Public Service Commission or other recruiting authority, as the case May be, so consider necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the Commission /other recruiting authority, as the case may be.

15-A. Selection for appointment to the post by contract appointment.—Notwithstanding anything contained in these Rules, contract appointments to the post will be made subject to the terms and conditions given below: -

(I) CONCEPT.—(a) Under this policy the Radiation Safety Officer (Radio Diagnosis), in the Department of Radiology, Indira Gandhi Medical College, Shimla will be engaged on contract basis initially for one year; which may be extendable on year-to-year basis.

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed / extended.

(b) POST FALLS WITHIN THE PURVIEW OF HPPSC.—The Principal Secretary (Health)/Secretary (Health) to the Government of Himachal Pradesh after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. Himachal Pradesh Public Service Commission.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these R&P Rules.

(II) CONTRACTUAL EMOLUMENTS.—The Radiation Safety Officer (Radio Diagnosis) appointed on contract basis will be paid consolidated fixed contractual amount @ ₹ 15,700/- per month (which shall be equal to minimum of the pay band + grade pay). An amount of ₹ 471/- (3% of the minimum of pay band + grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING/DISCIPLINARY AUTHORITY.—The Principal Secretary (Health)/Secretary (Health) to the Government of Himachal Pradesh will be the appointing and disciplinary authority.

(IV) SELECTION PROCESS.—Selection for appointment to the post in the case of contract appointment will be made on the basis of *vivavoce* test or if consider necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the concerned recruiting agency *i.e.* the Himachal Pradesh Public Service Commission.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.—As may be constituted by the concerned recruiting agency *i.e.* the Himachal Pradesh Public Service Commission from time to time.

(VI) AGREEMENT.—After selection of a candidate, he / she shall sign an agreement as per Annexure-B appended to these Rules.

(VII) TERMS AND CONDITIONS.—(a) The contractual appointee will be paid fixed contractual amount @ ₹ 15,700/- per month (which shall be equal to minimum of pay band + grade pay). The contract appointee will be entitled for increase in contractual amount @ ₹ 471/- (3% of the minimum of the pay band + grade pay of the post) for further extended years and no other allied benefits such as senior/selection scales etc. will be given.

(b) The service of the contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contract Appointee will be entitled for one day's casual leave after putting one month service. The contract employee will also be entitled for 12 weeks Maternity Leave and 10 day's Medical Leave . He/She shall not be entitled for Medical Re-imburement and LTC etc. No leave of any other kind except above is admissible to the contract appointee.

Provided that the un-availed Casual Leave and Medical Leave can be accumulated upto the Calendar Year and will not be carried forward for the next Calendar Year.

(d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for contractual amount for the period of absence from duty.

(e) An official appointed on contract basis who has completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. Women candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart at the minimum of pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this column.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes /Scheduled Tribes / Other Backward Classes / other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination.—Every member of the service shall pass a Departmental Examination as prescribed in the H.P. Departmental Examination Rules, 1997, as amended from time to time.

18. Powers to relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Himachal Pradesh Public Service Commission relax any of the provision(s) of these Rules with respect to any Class or Category of person(s) or post(s).

ANNEXURE-B

Form of contract /agreement to be executed between the Radiation Safety Officer (Radio-Diagnosis) and the Government of Himachal Pradesh through Principal Secretary (Health) to the Govt. of Himachal Pradesh

This agreement is made on this _____ day of _____ in the year _____ between Sh./Smt. _____ S/oD/oShri. _____ R/o _____ contract appointee (hereinafter called the FIRST PARTY), and the _____ (Designation of the Appointing Authority) Himachal Pradesh (here-in-after the SECOND PARTY). Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a _____ (Name of the post) on contract basis on the following terms & conditions:-

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a _____ (Name of the post) for a period of 1 year commencing on day of _____ and ending on the day of _____. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on - -----and information, notice shall not be necessary.

Provided that for further extension/renewal of contract period of HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed/extended.

2. That the contractual amount of the FIRST PARTY will be 15,700 /- per month.
3. That the services of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/contract of the contract appointee is not found good or if a regular incumbent is appointed/ posted against the vacancy for which the first party was engaged on contract.
4. That the Contract Appointee will be entitled for one day's casual leave after putting one month service. The contract employee will also be entitled for 12 weeks Maternity Leave and 10 day's Medical Leave. He/She shall not be entitled for Medical Re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee. Provided that the un-availed Casual Leave and

Medical Leave can be accumulated upto the Calendar Year and will not be carried forward for the next Calendar Year.

5. That the unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. A contractual _____ (Name of the post) will not be entitled for salary for the period of absence from duty.
6. That an officer appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need basis wherever required on administrative grounds.
7. That the selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.
8. That the contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter-part officer/ official.
9. That the Employees Group Insurance Scheme as well as E.P.F./G.P.F. will not be applicable to contractual appointee(s).

IN WITNESS THE FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1. _____

(Name and Full Address)

(Signature of the FIRST PARTY)

2. _____

(Name and Full Address)

IN THE PRESENCE OF WITNESS:

1. _____

(Name and Full Address)

(Signature of the SECOND PARTY)

2. _____

(Name and Full Address)

